

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SHES 12473



### **Donate Life Northwest**

LifeCenter Northwest  
Living Legacy Foundation  
SightLife  
Northwest Lions Foundation for Sight & Hearing  
Northwest Tissue Center

### **ENDORSEMENTS**

*"I hope the UAGA will pass in Washington, giving all of us—donor families, waiting list candidates, recipients, and most of all, donors- assurance that our end of life decisions are honored." -- Elaine Morse, widow of donor, Bellevue, WA*

### **National Medical and Health Care Organizations**

American Academy of Ophthalmology  
American Association of Tissue Banks  
American Medical Association  
American Society of Cataract & Refractive Surgery  
Association of Organ Procurement Organizations  
The Cornea Society  
Eye Bank Association of America  
National Kidney Foundation  
United Network for Organ Sharing

### **Regional Medical and Health Care Organizations**

Children's Hospital and Regional Medical Center  
Community Tissue Services  
LifeCenter Northwest  
Living Legacy Foundation  
Northwest Lions Foundation for Sight & Hearing  
Northwest Tissue Center  
Oregon Health & Science University  
Pacific Northwest Transplant Bank  
Providence Health and Services Washington Region  
Sacred Heart Medical Center  
SightLife  
Swedish Medical Center  
University of Washington Medical Center  
Virginia Mason Medical Center

### **Organized Labor**

International Association of Machinists and Aerospace Workers, District Lodge 751  
Washington State Council of County and City Employees

### **Groups and Individuals**

Korean Women's Association  
Ron Chow, Governor's Commission on Asian Pacific American Affairs Commissioner

*"When it comes to the UAGA, the goal is to follow the wishes of the patient in a timely and uniform manner. It does not hinder anyone's end of life decision - in fact, the aim is to ensure end of life decisions ARE honored by preventing family members from overriding a deceased person's wish to donate." -- Randy Small, heart transplant recipient, Bothell, WA*



## UAGA Backgrounder

### Original UAGA

- The Uniform Anatomical Gift Act was enacted in August of 1968, in order to establish comprehensive and uniform laws regarding organ and tissue donation, and to ensure compliance with the donor's wishes.
- All 50 states and the District of Columbia adopted this act, some in slightly modified form.
- A subsequent revision was recommended and enacted in 1987 by many states, strengthening the ability of each individual to make their own decision about donation.
- Key Provisions:
  - Any individual of sound mind over the age of 18 may make an anatomical gift.
  - Neither age nor medical history should discourage a person's decision to donate.
  - If a person has not made their own donation decision, that responsibility will fall to their next of kin. Consent for the gift will be sought from the following people, in this order: spouse, adult child, parent, adult sibling, legal guardian. If any listed individual refuses consent, no further requests will be made and donation will not occur.
  - The individual may choose to make limitations on anatomical gifts, including which organs and tissues may be donated.

### Revised UAGA 2008 (HB1637 - SB 5657)

- The act was written by the National Conference of Commissioners on Uniform State Laws (NCCUSL), which develops and drafts acts on all subjects for State Legislatures to consider. The types of model statutes created are those where consistency across state lines is desirable.
- **The intent of the 2008 revision is to update and modernize the UAGA in every state, to ensure consistency in policy and practice across the nation.** Uniformity is vital because life-saving transplants can cross state borders. We must ensure people across the US receive the same high level of service, benefit from the same resources, and are protected by the same laws.
- Washington's UAGA will be updated in a number of vital ways:
  - It harmonizes Washington's UAGA with federal law, current technology and Advance Medical Directives.
  - It clarifies the rules for donation decision-making when a registry record is not in place, further defining who can make or refuse a gift on the behalf of the potential donor.
  - It strengthens an adult's right to refuse a gift if they so desire, as well as the right of a parent or guardian to refuse a gift on behalf of a minor.
  - It clarifies the roles and responsibilities of donation agencies, indicating who is responsible for tracking and managing potential donors and who can receive and process an anatomical gift.
  - It provides new guidelines for cooperation and coordination between organ donation agencies and medical examiners and coroners, particularly in cases where a potential donor's death circumstances placed them under the jurisdiction of the Medical Examiner or coroner.
  - It more clearly prioritizes donation for transplantation over donation for research.
  - Though some states will enact registry provisions, in order to collect a database of donation decisions, Washington already has a registry in place that meets or exceeds all standards being requested. The Living Legacy Registry will remain unchanged.
  - This revision of the UAGA is strongly supported by local and national organ and tissue donation agencies and governing bodies as well as multiple medical associations, societies, and foundations.

## The 2006 Revised Uniform Anatomical Gift Act—A Law to Save Lives

Sheldon E. Kurtz, JD, University of Iowa College of Law and  
Christina Woodward Strong, JD, Law Offices of Christina Strong, Belle Mead, NJ  
David Gerasimow, Student Research Assistant

*At its July 2006 Annual Meeting, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved a Revised Uniform Anatomical Gift Act, a revision that was three years in the making, and involved the active participation of numerous stakeholders, lawyers, judges, physicians, and others. Given the life-saving goals of this effort, NCCUSL hopes to see this act adopted by all state legislatures within the next two years. As Howard J. Swibel, President of NCCUSL, stated: "Rarely do we as virtual legislators have the opportunity to literally save people's lives. This is such an opportunity, and we must seize it in earnest, since thousands are waiting for life-saving organ transplants."*

### THE ORGAN DONATION CRISIS

As of November 2006, over 94,000 Americans were awaiting life-saving organ transplants.<sup>1</sup> Approximately nineteen of these patients die every day while still waiting.<sup>2</sup> No longer merely a tragedy, the growing divide between the number of people awaiting transplants and the number of available organs has become a national health crisis.<sup>3</sup>

The vast majority of organs available for transplant in the United States come from deceased donors ("anatomical donors" or "UAGA donors").<sup>4</sup> Each deceased donor may

give as many as seven solid organs for transplantation,<sup>5</sup> in addition to eyes and numerous tissues (including bone) for treatment of burns, cancers, blindness, spinal injuries, among many other conditions. Thus, for each potential donor lost—whether due to legal ambiguity, system error, inefficiency, family dynamics, or simple delay—it is highly likely that a number of lives will be lost and that at least fifty people will lose the opportunity to benefit from tissue and eye donation. Research indicates that nearly nine in ten Americans support organ donation generally,<sup>6</sup> yet more than 40% of potentially transplantable organs are buried or cremated,<sup>7</sup> by conservative estimates.<sup>8</sup> It is apparent that much of the failure to save lives on this transplant list can be attributed to factors other than the generosity of the American people, which appears to be going strong.<sup>9</sup>

### THE SHORTCOMINGS OF THE UNIFORM ANATOMICAL GIFT ACTS OF 1968 AND 1987

It was against this bleak backdrop that the Association of Organ Procurement Organizations (AOPO) reviewed the anatomical gift laws of fifty-four different jurisdictions,<sup>10</sup> all of which have in place either the original 1968 UAGA or its 1987 revision, often with additional jurisdic-

tion-specific modifications. AOPO is a nonprofit organization that represents all federally designated organ procurement organizations (OPOs).<sup>11</sup> After it had identified numerous problems, discussed below, AOPO approached NCCUSL, the group that had promulgated both versions of the UAGA, to see if it would be willing to work on yet another revision.<sup>12</sup>

NCCUSL has worked for the uniformity of state laws since 1892.<sup>13</sup> It is a nonprofit, unincorporated association comprised of commissions, one from each of the fifty states and also from the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment for its commission, as well as the number of individuals appointed. These individuals, called commissioners, come together as the National Conference to study and review the law of the states and to determine those areas that should be uniform. After identifying such areas, the commissioners propose and draft statutes specifically addressing them.

AOPO found the following problems among the current anatomical gift laws:

- The anatomical gift laws are hardly uniform, even though every jurisdiction had adopted the original

UAGA within two years of its 1968 promulgation by NCCUSL. The 1987 revision was adopted only sporadically, and often only in part.<sup>11</sup> Moreover, many states, such as Texas, New Jersey, California, Iowa, Wisconsin, Michigan, and New York, enacted unique versions, touching upon such diverse issues as donor-card signatures, death-record reviews, medical-examiner cooperation, tax incentives, and drivers' license donor registries. Non-uniformity is exacerbated by the fact that many states' anatomical gift acts fail to resolve choice-of-law and conflicts issues, such as how to deal with a document of gift drafted in a state other than the one in which the donor dies.

- Since the late 1980s, federally designated OPOs have administered the process of assessing and obtaining authorization for anatomical gifts.<sup>15</sup> Under federal law, OPOs also are responsible for assuring that anatomical gifts are properly managed, recovered, and allocated according to the national waiting list maintained by the federally mandated Organ Procurement and Transplantation Network (OPTN). The nonprofit United Network for Organ Sharing (UNOS) currently runs the OPTN under contract with the federal government. The 1968 and 1987 versions of the UAGA fail to address the roles of these entities. In fact, some provisions of existing anatomical gift acts flatly contradict federal law, regulation, or policy. For example, since 1998, the Medicare Conditions of Participation (COPs)<sup>16</sup> have required Medicare-participating hospitals to maintain affiliation agreements with OPOs. Furthermore, the COPs permit only specially trained personnel to approach families with requests for donation. Yet the anatomical gift acts in many states imply that hospitals bear the sole responsibility for interacting with donor families, and many still require hospitals to seek organ donation preferences upon

admission. Some states ameliorated conflicts such as these by drafting amendments reflecting the federal regulatory scheme, either to their anatomical gift act or to their hospital-licensing regulations. In more than a few cases, such amendments were "tacked on" to existing acts, creating internal statutory conflict.<sup>17</sup>

- Increasingly, motor-vehicle licenses and Internet-based donor registries are being used as means to permanently and accessibly record documents of gift. Yet there is no standard definition of a donor registry, and no core requirements for their establishment or function.
- Healthcare agents or proxy holders under a durable healthcare power of attorney are not entitled to authorize post-mortem organ donation under the 1968 and 1987 UAGAs. Multiple decision-makers therefore are potentially involved in end-of-life decisions about treatment, ventilation withdrawal, and post-mortem donation. Moreover, individuals who want a partner or other individual to make post-mortem donation decisions on their behalf cannot effectuate this wish under prior UAGAs.
- The 1987 UAGA explicitly provides that no other person may revoke a document of gift and that the assent of no other person is required for a gift to be valid.<sup>18</sup> This arguably had been the implicit intent of the 1968 UAGA. Yet some OPOs and hospitals fail to follow the existing law, causing AOPO and others to seek stronger and clearer language to further reinforce the legal finality of a document of gift.
- Most importantly, AOPO sought changes to provisions that frequently and unfairly thwart a family's wish to donate. Specifically, under both the 1968 and 1987 UAGAs, a single member of a class may veto an anatomical gift, irrespective of the number of other members in the same class that favor the making of

a gift.<sup>19</sup> Thus, if a decedent has no surviving spouse but has ten children, the "No" vote of one child trumps the "Yes" votes of the remaining nine. The prior UAGAs sanction a failure of majority rule that likely contravenes the decedent's wishes and that, more striking, also leads almost invariably to waiting-list deaths. This imbalance serves neither autonomy, nor altruism, nor the public good.

In light of these problems, NCCUSL decided to go forward with another revision that builds upon the concepts found in earlier versions, but that also includes a number of significant changes addressing the problems noted above. In addition to other improvements, the 2006 Revised Uniform Anatomical Gift Act warrants the careful and serious consideration of every jurisdiction for complete and uniform enactment.

### **THE 2006 REVISED UNIFORM ANATOMICAL GIFT ACT**

The Revised Uniform Anatomical Gift Act of 2006 (2006 UAGA) relates only to the recovery of parts (organs, eyes, and tissues) from deceased donors, although anatomical gifts from living donors are becoming increasingly common.<sup>20</sup> Furthermore, the 2006 UAGA continues to adhere to the so-called "opt-in" system under which no individual is a donor absent an affirmative gift of his or her parts.

Like prior versions, the centerpiece of the 2006 UAGA is the concept of "first-person" consent, under which no other person can alter the individual's decision to donate his or her parts after death. The 1987 UAGA purported to adopt that concept through language making an individual's gift "irrevocable," but, in practice, some procurement organizations reportedly ignored the wishes of a donor if surviving family members objected. While the 2006 UAGA does not use the language of irrevocability, it nonetheless accomplishes that goal

## ANALYSIS

by its strengthened language expressly barring a person from "making, amending, or revoking" an anatomical gift of the donor's parts if the donor made a gift of them.<sup>21</sup> It would be unlawful for a procurement organization to act upon an attempted revocation by surviving family members.

The 2006 UAGA facilitates donation by expanding the list of individuals who may make an anatomical gift on a donor's behalf both during the donor's life and thereafter. For example, it explicitly authorizes a parent of a minor, a guardian of an individual, and, most importantly, an agent acting under a healthcare power of attorney to make an anatomical gift during the life of the child, ward, or principal.<sup>22</sup> Such a gift then bars others from revoking the gift after the child, ward, or principal dies.<sup>23</sup> The 2006 UAGA also authorizes a minor who is eligible to obtain a driver's license or permit to make a gift without parental consent,<sup>24</sup> although a parent of the minor can revoke the gift if the minor dies under the age of 18.<sup>25</sup> The minor can make that gift on any type of document of gift, not only on a driver's license or permit.<sup>26</sup>

The 2006 UAGA also expressly provides for the making of an anatomical gift on a donor registry, in addition to donor cards and driver's licenses.<sup>27</sup> In time, donor registries may become the primary device used to make anatomical gifts. The 2006 UAGA allows the appropriate state agency to establish, or contract for the establishment of, a donor registry.<sup>28</sup> It also sets forth three criteria for a well-designed donor registry: (1) that it allow a donor or other authorized persons to make a gift on the registry by way of statement or symbol, (2) that it be accessible to all procurement organizations to determine whether an individual at or near death has made, amended, or revoked an anatomical gift, and (3)

that it be accessible to donors, authorized persons acting on their behalf, and procurement organizations on a 24/7 basis.<sup>29</sup> Private organizations may create donor registries without a contract from the state, but they must still satisfy the same three criteria.<sup>30</sup>

If a decedent dies without having made an anatomical gift during life, the 2006 UAGA provides that a gift can be made on the decedent's behalf by his or her spouse, adult children, parents, adult siblings, and grandparents.<sup>31</sup> The previous versions of the UAGA also empowered these classes,<sup>32</sup> but the 2006 UAGA expands upon the list by adding the decedent's adult grandchildren,<sup>33</sup> as well as any adult who exhibited special care and concern for the decedent.<sup>34</sup> It also adds the individual who had been acting as the decedent's agent under a healthcare power of attorney at the time of the decedent's death.<sup>35</sup> The 2006 UAGA accords first priority to such an agent.<sup>36</sup> If none of these persons is reasonably available to make an anatomical gift, the gift can be made by the person having the authority to dispose of the decedent's body.<sup>37</sup> This individual could be a coroner or medical examiner, hospital administrator, or government official.

The 2006 UAGA also changes prior law regarding anatomical gifts from classes consisting of multiple members, such as children. Under the 2006 UAGA, any member of a class may make a gift if he or she is unaware of any objections by other members of the class.<sup>38</sup> If an objection is known, then the gift can only be made by a majority of the class members who are reasonably available.<sup>39</sup> If, for example, a decedent has three children, any one of them can make a gift on the decedent's behalf, unless that child knows that one of his or her siblings objects. If such an objection is known, then the

gift can be made only by the majority of those children who are reasonably available. Thus, if all three children are reasonably available and an objection is known, two of them must agree to donate before a gift is made. If only two of them are reasonably available and an objection is known, they must agree, and the gift is made despite the objections of the third child, who is not reasonably available. Class members who are not reasonably available do not get to participate in the decision whether to make an anatomical gift.<sup>40</sup> This was a purposeful choice because a known objection by a person who is not reasonably available may be based upon faulty information about the effects of a gift or other concerns that could have been ameliorated had that person been reasonably available to discuss the matter with the relevant procurement organization.

Anatomical gifts can be made for the purposes of transplantation, therapy, research, or education. Prior law, unlike the 2006 UAGA, made no attempt to prioritize these purposes, either when the donor authorized all four, when the donor authorized some, or when the donor failed to specify any. Also, under the prior UAGAs, it was unclear which purposes a donor intended when he or she manifested his or her intent merely by checking a box marked "organ donor" or by placing a symbol or statement on his or her driver's license. Anecdotal evidence suggests that these donors contemplated only transplantation and therapy, not research or education. Lastly, prior law did not specifically identify the persons to which gifts pass. The 2006 UAGA resolves these issues by setting forth a number of default rules to guide the interpretation of ambiguous documents of gift (*See Table*).<sup>41</sup>

The 2006 UAGA creates a number of rights and duties for procurement organizations,<sup>42</sup> many of which were

**Table: Rules Governing the Interpretation of Ambiguous Documents of Gift**

<i>Gift of</i>	<i>Purpose</i>	<i>Named donee or custodian</i>	<i>Gift passes to:</i>
Whole body specified or specified part	Research or education	Named hospital, accredited medical school, dental school, college or university	Hospital, accredited medical school, dental school, college or university as named.
Specified part	Transplantation	Named individual who is also the recipient of the gift	Named individual, unless the part specified cannot be transplanted into the named individual, in which case, the specified part passes to the appropriate OPO as custodian, or to the appropriate eye bank or tissue bank.
Specified part	One or more specified purposes, prioritized	None named	Follow the specified priority, changing the purpose if higher purposes are not possible.  If the gift is for the purpose of transplantation or therapy, the part passes to the appropriate OPO as custodian, or to the appropriate eye bank or tissue bank.  If the gift is for the purpose of research or education, to the appropriate eye bank, tissue bank or organ procurement organization.
Specified part	One or more specified purposes, not prioritized	None named	If multiple purposes, the following priority applies: transplantation or therapy, and then research or education.
Specified part	None specified	None named	The part may be used only for transplantation or therapy, and the part passes to the appropriate OPO as custodian, or to the appropriate eye bank or tissue bank. Then follow the rules for passage of the gift where the purposes are prioritized.
No parts specified	One or more specified purposes, prioritized	None named	Follow the specified priority, changing the purpose if higher purposes are not possible.  If the gift is for the purpose of transplantation or therapy, the parts pass to the appropriate OPO as custodian, or to the appropriate eye bank or tissue bank.  If the gift is for the purpose of research or education, the parts pass to the appropriate eye bank, tissue bank or organ procurement organization.

Table: Rules Governing the Interpretation of Ambiguous Documents of Gift

<i>Gift of</i>	<i>Purpose</i>	<i>Named donee or custodian</i>	<i>Gift passes to:</i>
No parts specified	One or more specified purposes, not prioritized	None named	If multiple purposes, the following priority applies: transplantation or therapy, and then research or education. Then follow the rules for passage of the parts where the purposes are prioritized.
No parts specified*	None specified	None named	The whole body may not be donated. The part may be used only for transplantation or therapy, and the part passes to the appropriate OPO as custodian, or to the appropriate eye bank or tissue bank.

\*A mere "general intent" to be either a "donor" or "organ donor," either expressly or by symbol.

incorporated in prior versions.<sup>43</sup> But, some additional ones have been added. For example, if a hospitalized patient is referred to a procurement organization to determine whether that patient is a prospective donor, measures necessary to ensure the medical suitability of the patient's parts may not be withdrawn, unless it is known that the patient had expressed a contrary intent.<sup>44</sup> The 2006 UAGA imposes upon procurement organizations the affirmative obligation to conduct a reasonable search for the parents of a minor donor to provide them with an opportunity to revoke the minor's anatomical gift.<sup>45</sup> Similarly, if a prospective donor has not made an anatomical gift, the procurement organization must conduct a reasonable search for any person having priority to make an anatomical gift upon the prospective donor's death.<sup>46</sup>

The 2006 UAGA provides that a document of gift is valid if executed in accordance with the laws of the state in which the gift is made or the laws

of the state where the person making the gift is domiciled, has a place of residence, or is a national.<sup>47</sup> Procurement organizations and other persons can presume individuals who sign a document of gift are who they say they are, unless it has actual knowledge that they are not.<sup>48</sup>

Even if a prospective donor has a declaration or advance healthcare directive instructing the withdrawal or withholding of life-support systems, measures necessary to ensure the medical suitability of organs for transplantation or therapy will not be withdrawn or withheld, unless the declaration or advance healthcare directive expressly so provides.<sup>49</sup> Thus, the 2006 UAGA adjusts the potential tension between the desires of individuals to donate organs, and the desires of individuals not to have their lives unduly prolonged.

Lastly, the 2006 UAGA includes two comprehensive sections relating to the interactions between procurement organizations on the one hand,

and coroners and medical examiners on the other.<sup>50</sup> It eliminates provisions found in the previous versions that allow coroners and medical examiners to donate parts under certain circumstances. These provisions have run into legal difficulties in the courts.<sup>51</sup> Under the 2006 UAGA, coroners and medical examiners cannot make an anatomical gift on the behalf of an individual under their jurisdiction unless the individual, or other authorized persons, such as agents, family members, guardians, and close friends, have made such a gift. However, if the individual did not make a gift, and if other authorized persons did not make a gift because they were not reasonably available, then the coroner or medical examiner has the authority to make the gift. The 2006 UAGA, through a number of rules, also directs procurement organizations and coroners and medical examiner to cooperate in maximizing donation opportunities.

In sum, the 2006 UAGA incorporates a number of important new features

that will increase organ, tissue, and eye donation. It addresses and resolves the shortcomings of its previous versions, while taking into account medical and legal advances that have occurred since the last revision. As the organ donation crisis continues to grow, the 2006 UAGA will play a significant role in any solution, but only if adopted by most, if not all, state legislatures.

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*representation of organ and tissue donation entities. She served as an Observer to the Uniform Anatomical Gift Act Drafting Committee.*

*The authors are grateful for the scholarly assistance of David Cerasimuro, a second year law student at the University of Iowa Law School.*

## END NOTES

- 1 United Network for Organ Sharing (UNOS), [www.unos.org](http://www.unos.org) (last visited Nov. 21, 2006).
- 2 U.S. Dep't of Health and Human Servs., Health Resources and Servs. Admin., Healthcare Sys. Bureau, Div. of Transplantation (HHS/HRSA/HSB/DOE), [www.organdonor.gov](http://www.organdonor.gov) (last visited Nov. 21, 2006).
- 3 The difference between the number of individuals on the national waiting list at year end and the number of individuals who annually received organs increased from 22,185 individuals in 1995 to 59,347 in 2004. HHS/HRSA/HSB/DOE, 2005 ANNUAL REPORT OF THE U.S. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK AND THE SCIENTIFIC REGISTRY OF TRANSPLANT RECIPIENTS: TRANSPLANT DATA 1995-2004 tbls.1.4 & 1.10 (2005), available at [www.optn.org/data/annualReport.asp](http://www.optn.org/data/annualReport.asp) [hereinafter 2005 OPTN/SRTR ANNUAL REPORT 1995-2004].
- 4 In 2004, about three out of every four transplanted organs came from a deceased donor. *Id.* at tbl.1.7.
- 5 These organs are the heart, lungs, liver, pancreas, two kidneys, and small intestine.
- 6 GALLUP ORG., INC., THE AMERICAN PUBLIC'S ATTITUDES TOWARD ORGAN DONATION AND TRANSPLANTATION: A SURVEY (1993), available at [www.transweb.org/reference/articles/gallup\\_survey/gallup\\_index.html](http://www.transweb.org/reference/articles/gallup_survey/gallup_index.html).
- 7 2005 OPTN/SRTR ANNUAL REPORT 1995-2004, *supra* note 3, at tbl.11-2 (showing that, in the first four months of 2005, 57.2% of potential donors actually became donors).
- 8 While UNOS states that about 40% of organs go unused, some scholars estimate that number to be closer to 60%. *See* NAT'L ACADEMIES, INST. OF MED., BD. ON HEALTH SCI. POLICY, COMM. ON INCREASING RATES OF ORGAN DONATION, ORGAN DONATION: OPPORTUNITIES FOR ACTION 127 (2006), available at Nat'l Academies Press, [www.nap.edu](http://www.nap.edu) (search for "Organ Donation: Opportunities for Action").
- 9 *See* GALLUP ORG., INC., *supra* note 6. The same survey showed that 37% and 32% of respondents were "very likely" or "somewhat likely," respectively, to donate their own organs. *Id.*
- 10 AOPO surveyed the following jurisdictions: all fifty states, the District of Columbia, Guam, and the U.S. Virgin Islands.
- 11 *See* [www.aopo.org](http://www.aopo.org) (last visited Nov. 21, 2006) for more information on AOPO.
- 12 It should be noted that AOPO was not alone in identifying the need for statutory revision. The U.S. Department of Health and Human Services Advisory Committee on Organ Transplantation issued recommendations in May of 2003, which called for an update after recognizing the non-uniformity among the states with regard to the UAGA.
- 13 *See* [www.nccusl.org](http://www.nccusl.org) (last visited Nov. 21, 2006) for more information on NCCUSL.
- 14 By 2003, it had become difficult to separate those states that had adopted the 1987 changes from those that were non-uniform, due to the variety of amendments in the sixteen years since the 1987 promulgation.
- 15 National Organ Transplant Act of 1984, Pub. L. No. 98-507 (codified at 42 U.S.C. §§ 273-74).
- 16 42 C.F.R. § 482.45.
- 17 *Compare* N.Y. PUB. HEALTH LAW art. 43 with N.Y. COMP. CODES R. & REGS. tit. 10, § 405.25.
- 18 UNIF. ANATOMICAL GIFT ACT § 2(h) (1987) [hereinafter 1987 UAGA].
- 19 1987 UAGA § 3(d), § 6(c).
- 20 Living donations raise distinct issues best left to other law.
- 21 UNIF. ANATOMICAL GIFT ACT § 8 (2006) [hereinafter 2006 UAGA].
- 22 2006 UAGA §§ 4, 5.
- 23 2006 UAGA § 8(c).
- 24 2006 UAGA § 4(1)(b).
- 25 2006 UAGA § 8(g), (h).
- 26 2006 UAGA §§ 4(1)(b), 5.
- 27 2006 UAGA § 5.
- 28 2006 UAGA § 20(a).
- 29 2006 UAGA § 20(c).
- 30 2006 UAGA § 20(e).
- 31 2006 UAGA § 9(a)(2)-(5), (7).
- 32 1987 UAGA § 3.
- 33 2006 UAGA § 9(a)(6).
- 34 2006 UAGA § 9(a)(8).
- 35 2006 UAGA § 9(a)(1).
- 36 *Id.*
- 37 2006 UAGA § 9(a)(10).
- 38 2006 UAGA § 9(b).
- 39 *Id.*
- 40 *Id.*
- 41 2006 UAGA § 11.
- 42 2006 UAGA § 14.
- 43 1969, 1987 UAGA *passim*.
- 44 2006 UAGA § 14(c).
- 45 2006 UAGA § 14(f).
- 46 2006 UAGA § 14(g).
- 47 2006 UAGA § 19(a).
- 48 2006 UAGA § 18(c).
- 49 2006 UAGA § 21(b).
- 50 2006 UAGA §§ 22, 23.
- 51 *See, e.g., Neenan v. Sathiyavagiswaran*, 287 F.3d 786 (9th Cir. 2002); *Bohannon v. Cleveland*, 923 F.2d 477 (6th Cir. 1991).

DRAFT

FISCAL NOTE

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STATE OF ALASKA  
2008 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CS SB 181 (HES)  
( ) Publish Date: \_\_\_\_\_  
Dept. Affected: Health & Social Services  
RDU: Public Health  
Component: State Medical Examiner

ID (File name) SB181CS(HES)-DHSS-SME-02-11-08  
Title ANATOMICAL GIFTS  
Sponsor MCGUIRE  
Requester SENATE HES

Component No. 293

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation		Information					
	Required		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>			0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES (0)</b>								
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FUND SOURCE		(Thousands of Dollars)						
1002 Federal Receipts								
1003 GF Match								
1004 GF								
1037 GF/Mental Health								
Other (Specify Type-do not abbreviate)								
Other (Specify Type-do not abbreviate)								
<b>TOTAL</b>			0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: \_\_\_\_\_

POSITIONS								
Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

The purpose of CSSB181 (HES) is to increase organ donations by re-defining the authority and roles of the State Medical Examiner (SME), organ procurement organizations, hospitals, EMS responders and others involved in organ donations. It stems from a recent national rewrite of the Uniform Anatomical Gift Act. The bill also affects end-of-life decisions, generally in favor of organ donation. The bill also broadens the pool of organ donors by lowering the age of decision from 18 to 16 and expanding the list of people authorized to make an anatomical gift.

The sections of CSSB181 (HES) that most directly impact DHSS involve the role of the SME in working with organ procurement organizations. Pages 16-18 of the bill clarify those roles. There is no fiscal impact to the SME Office.

Prepared by: Beverly K. Woolley Phone 465-3090  
 Division: Director of Public Health Date/Time 02/11/2008  
 Approved by: Karlean Jackson, Commissioner Date 02/11/2008  
 Agency: Department of Health and Social Services

## **Public Testimony for SB 181**

### *Online*

**Bruce Zalneraitis**  
**CEO, Life Alaska Donor Services**

**Mike Gherty**  
**Commissioner for Uniform State Laws**

**Sherry Badillo-Moreno**  
**Donor family member from Palmer**

**Kim McGee**  
**Kidney-pancreas recipient from Anchorage**

**Rob Meyer**  
**Heart recipient from Anchorage.**

### *In person*

**Deborah Behr and Mike Ford**  
**Department of Law**

**SB**

**191**

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 1/16/08

FURTHER: Finance

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 2/29/08

Health, Education and Social Services Committee considered

SENATE BILL NO. 191

**SB 191 PUBLIC EDUCATION OF HOMELESS STUDENTS**

"An Act relating to continuing the public education of a homeless student and to the purpose of certain laws as they relate to children."

and recommends:

be replaced with  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt \_\_\_\_\_ Letter of Intent

further referral to Finance Committee

<b>SENATE BILL:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Impact	Info	FN#
Child Support Services	2/29/08				✓
DEED	2/29/08				✓

Department	Date	Fiscal	Impact	Info	FN#

APPROPRIATION - no fiscal note

SIGNATURE	DATE	APPROVED	NO	NO	NO
<i>[Signature]</i>		Elton	✓		
<i>[Signature]</i>		Thomas	✓		
<i>[Signature]</i>		Dyson			✓
<b>CHAIR:</b> <i>[Signature]</i>		DAVIS	✓		

# Alaska State Legislature

Interim (May - Dec)  
716 W. 4<sup>th</sup> Ave  
Anchorage, AK 99501  
Phone: (907) 269-0144  
Fax: (907) 269-0148



Session: (Jan - May)  
State Capitol, Suite 30  
Juneau, AK 99801-1182  
Phone: (907) 465-3822  
Fax: (907) 465-3756  
Toll free: (800) 770-3822

Senator Bettye Davis legis.state.ak.us  
<http://www.akdemocrats.org>

## Senator Bettye Davis

**Senate Bill No. 191**  
**25-LS1075\C**

**"An Act relating to continuing the public education of a homeless student and to the purpose of certain laws as they relate to children."**

### Sponsor Statement

Because of the overriding importance of school stability for children in care and their need for educational guidance and advocates, SB 191 seeks to provide, to the extent feasible, comparable educational assistance provided to all eligible homeless children and youth in foster care under the McKinney-Vento Homeless Education Assistance Improvement Act, a federal grant program reauthorized under the No Child Left Behind Act of 2001. The definition of eligible children under the McKinney-Vento Act are those who lack a "fixed, regular, and adequate nighttime residence," or "are living in emergency or transitional shelters," or are "awaiting foster care placement." The last term, "awaiting foster care placement," while not defined in federal law, is interpreted under SB 191, new Sec. 1, AS 14.03.096, to include "all students who are placed in out-of-home care and in the custody of the Department of Health and Social Services. . . ." This significant change under SB 191 recognizes the many foster children who are in transition or are between placements and are in need of educational assistance.

SB 191, Sec. 2, changes AS 47.05.060, "Purpose and policy relating to children," to include "adequate education" and "intellectual" welfare to ensure that children and youth in foster care have access to education-related support services. McKinney-Vento protections include the right to remain in the "school of origin" when feasible; transportation paid by the school district when needed; immediate enrollment without "red tape;" timely transfer of school records; staff assistance by a designated district liaison; and prohibition against stigma as homeless. SB 191, Section 1(2) defines "school of origin" as "the school that the student attended when permanently housed or the school in which the student was last enrolled."

Since the McKinney-Vento Act presently provides only a small portion of the funding expended in Alaska for educating and transporting homeless and foster care children as required under NCLB, the main purpose of SB 191 is to improve educational outcomes for Alaska's most at-risk children.

## **Background**

Children in foster care struggle academically and suffer more poverty, low self-esteem and emotional trauma, social stigma, and higher mobility than others. They are more likely to drop out of school, repeat grades, and be placed in special education. A 2004 study of Chicago Public School youth found that fifteen-year-old students in out-of-home care were half as likely as other students to have graduated from high school five years later, with 55% having dropped out and 10% having been incarcerated. Only 54% of young adults who age out of care have completed high school. Youth in foster care attending public schools score 16 to 20 percentile points below youth in the general population in statewide standardized tests. And Youth in foster care on average read at only a 7<sup>th</sup> grade level after completing 10<sup>th</sup> or 11<sup>th</sup> grade. (Casey Family Programs. White Paper, Educating Children in Foster Care, McKinney-Vento and NCLB; also, ABANET.org/Child/Education).

These low educational outcomes are only exacerbated by the high mobility of children in foster care. The Legal Center for Foster Care and Education reported that children and youth in out-of-home care experience on average 1 or 2 foster care placement changes per year, citing US Dept. of Health & Human Services Administration for Children and Families. One third of children in foster care stay in care for less than 5 months, and another 17% remain in care for one year or less. Frequent school changes are associated with an increased risk of failing a grade in school and of repeated behavior problems. By 6<sup>th</sup> grade, students who have changed schools four or more times have lost approximately 1 year of educational growth. A Casey Foundation study of 1,087 foster care alumni found that youth who had one fewer placement change per year were almost twice as likely to graduate from high school before leaving care.

While extending McKinney-Vento Act protections to eligible homeless, out-of-home youth, or foster care children increases some school district direct and indirect costs, this will be more than offset by savings in social transfer costs, including decreases in physical and mental health problems, school failure, rates of incarceration, and increases in life-time earnings. Fourteen or more states have already enacted foster care/educational legislation modeled after some provisions of the McKinney-Vento Act. Alaska can afford to do no less.

# **Improving Education Outcomes for Children and Youth: Increasing Education Stability and Opportunity for Children and Youth in Out of Home Care**

## **EDUCATION AND CHILDREN IN OUT OF HOME CARE FACTS:**

**It is universally acknowledged that a quality education is important for the future success of all children. For example:**

- Recent U.S. Census Bureau statistics reveal that adults age 18 and over with a high school diploma earned \$28,645. Those without a high school diploma earned an average of \$19,169.<sup>1</sup>
- People who graduate from high school on average live 6 to 9 years longer than high school drop-outs due to a variety of factors, including income, living conditions, occupational safety, and access to health insurance.<sup>2</sup>

**Children in foster care are struggling academically. Studies have shown that:**

- Fifteen-year-old students in out-of-home care were about half as likely as other students to have graduated high school 5 years later, with significantly higher percentages of students in care having dropped out (55%) or been incarcerated (10%).<sup>3</sup>
- Only 54% of young adults discharged from care have completed high school.<sup>4</sup>
- Youth in foster care attending public schools scored 16 to 20 percentile points below non-foster youth in statewide standardized tests.<sup>5</sup>
- Youth in foster care on average read at only a seventh grade level after completing 10<sup>th</sup> or 11<sup>th</sup> grade.<sup>6</sup>

**Children in foster care are often highly mobile.**

- Children and youth in out-of-home care experience on average 1 or 2 foster care placement changes per year.<sup>7</sup>
- Nearly 20% of children in foster care stay in care for only one month, and another 16% remain in care for 5 months or less. Over half of all children who leave foster care will be returned home to their parents.<sup>8</sup>
- Over a third of young adults in a Midwest Study by Chapin Hall reported having had 5 or more school changes.<sup>9</sup>

**Mobility is affecting the education outcomes for children in foster care.**

- Frequent school changes are associated with an increased risk of failing a grade in school and of repeated behavior problems.<sup>10</sup>
- A University of Chicago study found that, by the 6<sup>th</sup> grade, students who had changed schools 4 or more times had lost approximately one year of educational growth.<sup>11</sup>
- In a national study of 1,087 foster care alumni, youth who had one fewer placement change per year were almost twice as likely to graduate from high school before leaving care.<sup>12</sup>

**Efforts are underway to improve education outcomes for children in foster care, but much more work is needed.**

The National Working Group on Foster Care and Education<sup>13</sup> has identified four objectives that would improve educational opportunities and outcomes for children in foster care:

- Improved educational stability for children and youth in foster care.
- Seamless educational transitions for children and youth when school changes do occur.
- High quality educational experiences, expectations and aspirations for young people in foster care.
- Greater national attention to the disparate educational outcomes for young people in foster care, particularly youth of color.

### **MCKINNEY-VENTO FACTS:**

**Currently, the McKinney-Vento Act, 42 U.S.C. § 11431 et seq., is an important vehicle that provides education stability to many children across the country. The act currently helps to reduce the barriers that eligible children and youth face in enrolling, attending, and succeeding in school.**

- McKinney-Vento includes more educational benefits than many advocates realize.
- The Act provides educational stability, continuity, and a unique system of support to help children in transition navigate the education system with ease and helps to enhance their academic and social growth.
- The McKinney-Vento Act provides funding for McKinney-Vento programs in many school districts across the country that are the vehicle to ensuring the rights of eligible children are protected and appropriate services are delivered.

**Currently, some children in out of home care are eligible for the benefits of the McKinney-Vento Act.**

- **The definition of children eligible under the McKinney-Vento Act includes "children awaiting foster care placement."** While this term has not been defined in the federal law or regulations, many states and jurisdictions have created their own definition. Examples include:
  - **Delaware** defines "awaiting foster care placement" as all children in foster care.
  - **Massachusetts and Connecticut** have reached state level agreements between their education and child welfare agencies to include certain children in foster care under McKinney Vento.
  - Other states and local jurisdictions have chosen to have informal policies to determine when a child in foster care is eligible under McKinney Vento.
- **The definition of children eligible under the McKinney-Vento Act includes children who lack a "fixed, regular, and adequate nighttime residence."** Because foster care by definition is temporary, many children in care have placements that may not be fixed or regular. Some states and jurisdictions have used this rationale to determine their policy for which children in foster care are eligible under McKinney Vento.

**Students' eligible under the McKinney-Vento Act (including some children in out of home care) are entitled to numerous specific educational rights and benefits.**

- **Educational Stability.** Children in out of home care benefit tremendously when allowed to stay in their original school when their living placements are changing or in flux. The Act entitles students to remain in their original school even when they move to a foster placement in a different school district, to the extent feasible, unless it is against the parent or guardian's wishes. In these situations, school districts must provide transportation to the original school at the request of the parent or guardian.
- **Immediate School Access.** Children and youth in foster care, like homeless students, often lack the documents required for school enrollment. Without legal protections, children moving to new foster care placements can experience days, weeks, or even months of school exclusion while documents are located. To prevent this problem, the McKinney-Vento Act requires schools to enroll eligible students immediately, even if they do not have required documents such as school records, medical records, or proof of residency. The children must not only be enrolled in classes, they must also be permitted to participate fully in school activities.
- **Liaison for McKinney-Vento-Eligible Students.** Liaisons are school staff who play a critical role in stabilizing students who are McKinney eligible and promoting their academic achievement. Children in out of home care critically need a designated school staff person who understands their circumstances and needs. The McKinney-Vento Act requires each school to designate an appropriate staff person as a liaison for eligible students whose role is to ensure appropriate children and youth are identified, enrolled in school, and have full and equal opportunity to succeed in school activities.
- **Title I Eligibility.** Children who are eligible for McKinney-Vento protections are also eligible for Title I benefits, without needing to qualify based on their current academic performance.

**McKinney-Vento is a successful program, with positive outcome evaluations and good progress being reported.**

- A March 2006 U.S. Department of Education report concluded that "states and local educational agencies (LEAs) have generally made significant progress in reducing the barriers that homeless children and youth face in enrolling, attending, and succeeding in school. The legislation has prompted States and LEAs to focus more on the needs of homeless students and has helped facilitate the expansion of local support networks to meet those needs...Although the appropriation levels for this program are relatively small, the impact of the program has been very widespread."
- Federal data collection also reveals that, over the past four years, the participation and proficiency rates of homeless students have increased in reading and math assessments.

In states where children in out-of-home care are not benefiting (or only some are benefiting) from the protections and supports of McKinney-Vento, other vehicles have been created to attempt to achieve McKinney-like protections (like the ones listed above) for children in foster care. Examples include:

- **California:** Effective January 2004, California passed a comprehensive foster care/education state law, known as AB 490, that provides almost all of the McKinney-like protections to children in out-of-home care. However, AB 490 did not include a mandate for transportation to a child's school of origin, even when determined to be in that child's best interest. Therefore, school of origin has been the least successful of the McKinney-like protections under AB 490.
- **Oregon:** Effective July 2005, Oregon also passed a foster care/education state law that allowed children to remain in their school of origin if a juvenile court determines it is the child's best interest to do so. Under state law, the child welfare agency is responsible for providing transportation to the school of origin, but only in such years where the funds have been designated. Currently, Oregon has committed to funding transportation through the 06-07 school year.

<sup>1</sup> See <http://www.census.gov/>.

<sup>2</sup> Wong, M., Shapiro, M., Boscardin, W. & Ettner, S. (2002). Contribution of major diseases to disparities in mortality. *New England Journal of Medicine*, 347, 1585-1592.

<sup>3</sup> Smithgall, C., Gladden, R.M., Howard, E., Goerge, R., Courtney, M. (2004). *Educational experiences of children in out-of-home care*. Chicago, IL: Chapin Hall Center for Children at the University of Chicago. This report compared children in the Illinois Chicago Public Schools system.

<sup>4</sup> Cook, R. (1994). Are we helping foster care youth prepare for the future? *Children and Youth Services Review*. 16(3/4), 213-229. Data were collected via in-person and telephone interviews of 810 young adults aged 18-24 years old 2.5 to 4 years after leaving foster care.

<sup>5</sup> Burley, M., & Halpern, M. (2001). *Educational attainment of foster youth: Achievement and graduation outcomes for children in state care*. Olympia, WA: Washington State Institute for Public Policy.

<sup>6</sup> Courtney, M.E., Terao, S. & Bost, N. (2004). *Midwest evaluation of the adult functioning of former foster youth: Conditions of youth preparing to leave state care*. Chicago, IL: Chapin Hall Center for Children at the University of Chicago. Wave One of Longitudinal study in three waves following 732 youth age 17 or 18 still in jurisdiction in Illinois, Iowa and Wisconsin as they age out of foster care.

<sup>7</sup> AFCARS Report #10: Preliminary 2003 Estimates as of April 2005, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, [www.acf.hhs.gov/programs/cb](http://www.acf.hhs.gov/programs/cb).

<sup>8</sup> Id.

<sup>9</sup> Courtney, M.E., Terao, S. & Bost, N. (2004).

<sup>10</sup> Wood, D., Halfon, N., Scarlata, D., Newacheck, P., & Nessim, S. (1993). Impact of family relocation on children's growth, development, school function, and behavior. *Journal of American Medical Association*, 270(11), 1134-1338.

<sup>11</sup> Kerbow, D. (1996). *Patterns of urban student mobility and local school reform*. Technical Report No. 5, October. Washington, DC: Center for Research on the Education of Children Placed at Risk. The data used included students in a stratified, random sample of public elementary schools and sixth-grade students in the Chicago Public Schools in the spring of 1994.

<sup>12</sup> Pecora, P.J., Williams, J., Kessler, R.C., Downs, A.C., O'Brien, K., Hiripi, E., & Morello, S. (2003). *Assessing the effects of foster care: Early results from the Casey National Alumni Study*. Seattle, WA: Casey Family Programs. Case record reviews and interviews were conducted for 1087 alumni served by the 23 Casey Field offices in operation in 1998.

<sup>13</sup> For more information about the National Working Group on Foster Care and Education and resources from this group visit [www.casey.org/friendsandfamiliespartners](http://www.casey.org/friendsandfamiliespartners).



# LEGAL CENTER FOR FOSTER CARE & EDUCATION

## FACT SHEET

### Educational Stability and Continuity for Children and Youth in Out-of-Home Care

#### FACTS ABOUT EDUCATION AND CHILDREN IN OUT-OF-HOME CARE

**It is universally acknowledged that a quality education is important for the future success of all children. For example:**

- Recent U.S. Census Bureau statistics reveal that adults age 18 and over with a high school diploma earn an average of \$28,645 per year. Those without a high school diploma earn an average of \$19,169 per year.<sup>1</sup>
- People who graduate from high school on average live 6 to 9 years longer than those who drop out of high school due to a variety of factors, including income, living conditions, occupational safety, and access to health insurance.<sup>2</sup>

#### **Children in foster care are struggling academically. Studies have shown that:**

- Fifteen-year-old students in out-of-home care are about half as likely as other students to have graduated from high school 5 years later, with significantly higher percentages of students in care having dropped out (55%) or been incarcerated (10%).<sup>3</sup>
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- Youth in foster care on average read at only a 7<sup>th</sup> grade level after completing 10<sup>th</sup> or 11<sup>th</sup> grade.<sup>6</sup>

#### **Children in foster care are often highly mobile.**

- Children and youth in out-of-home care experience on average 1 or 2 foster care placement changes per year.<sup>7</sup>
- One third of children in foster care stay in care for less than 5 months, and another 17% remain in care for one year or less.<sup>8</sup>
- Over a third of young adults reported having had 5 or more school changes.<sup>9</sup>

#### **Mobility is affecting the education outcomes for children in foster care.**

- Frequent school changes are associated with an increased risk of failing a grade in school and of repeated behavior problems.<sup>10</sup>
- By the 6<sup>th</sup> grade, students who change schools 4 or more times lose approximately 1 year of educational growth.<sup>11</sup>
- In a national study of 1,087 foster care alumni, youth who had one fewer placement change per year were almost twice as likely to graduate from high school before leaving care.<sup>12</sup>

#### **Efforts are underway to improve education outcomes for children in foster care, but much more work is needed.**

The National Working Group on Foster Care and Education<sup>13</sup> has identified 4 objectives with the potential for improving educational opportunities and outcomes for children in foster care:

- Improved educational stability for children and youth in foster care.

- Seamless educational transitions for children and youth when school changes do occur,
- High quality educational experiences, expectations, and aspirations for young people in foster care, and
- Greater national attention to the disparate educational outcomes for young people in foster care, particularly youth of color.

#### FACTS ABOUT THE MCKINNEY-VENTO ACT

**The McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 *et seq.*, is an important vehicle that provides educational stability to many children across the country. The Act currently helps to reduce the barriers that eligible children and youth face in enrolling, attending, and succeeding in school.**

- McKinney-Vento includes more educational benefits than many advocates realize.
- The Act provides educational stability, continuity, and a unique system of support to help children in transition navigate the education system with greater ease and helps to enhance their academic and social growth.
- The McKinney-Vento Act provides funding for McKinney-Vento programs in many school districts across the country that are the vehicle to ensuring the rights of eligible children are protected and appropriate services are delivered.

**Currently, *some* children in out-of-home care are eligible for the benefits of the McKinney-Vento Act.**

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and child welfare agencies to include certain children in foster care under McKinney-Vento.

Other states and local jurisdictions have chosen to have informal policies to determine when a child in foster care is eligible under McKinney-Vento.

- The definition of children eligible under the McKinney-Vento Act includes children who lack a "fixed, regular, and adequate nighttime residence." Because foster care by definition is temporary, many children in care have placements that may not be fixed or regular. Some states and jurisdictions have used this rationale to determine their policy for which children in foster care are eligible under McKinney-Vento.

**Students eligible under the McKinney-Vento Act (including some children in out-of-home care) are entitled to numerous specific educational rights and benefits.**

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**McKinney-Vento is a successful program, with positive outcome evaluations and good progress being reported.**

- A March 2006 U.S. Department of Education report concluded that: "[S]tates and local educational agencies (LEAs) have generally made significant progress in reducing the barriers that homeless children and youth face in enrolling, attending, and succeeding in school. The legislation has prompted States and LEAs to focus more on the needs of homeless students and has helped facilitate the expansion of local support networks to meet those needs... Although the appropriation levels for this program are relatively small, the impact of the program has been very widespread."<sup>14</sup>
- Federal data collection also reveals that, over the past 4 years, the participation and proficiency rates of homeless students have increased in reading and math assessments.

**In states where children in out-of-home care are not benefiting (or where only some are benefiting) from the protections and supports of McKinney-Vento, other vehicles have been created to attempt to achieve McKinney-like protections (similar the ones listed above) for children in foster care. Examples include:**

- **California:** Effective January 2004, California passed a comprehensive foster care/education state law, known as AB 490, that provides almost all of the McKinney-like protections to children in out-of-home care. AB 490 did not include a mandate for transportation to a child's school of origin, however, even when determined to be in that child's best interest. Maintaining enrollment in the school of origin, then, has been the least successful of the McKinney-like protections under AB 490.
- **Oregon:** Effective July 2005, Oregon also passed a foster care/education state law that allowed children to remain in their school of origin if a juvenile court determines it is the child's best interest to do so. Under state law, the child welfare agency is responsible for providing transportation to the school of origin, but only in such years where the funds have been designated. Currently, Oregon has committed to funding transportation through the 2006–2007 school year.

- <sup>1</sup> See <http://www.census.gov/>.
- <sup>2</sup> Wong, M., Shapiro, M., Boscardin, W. & Ettner, S. (2002). Contribution of major diseases to disparities in mortality. *New England Journal of Medicine*, 347, 1585-1592.
- <sup>3</sup> Smithgall, C., Gladden, R.M., Howard, E., Goerge, R., Courtney, M. (2004). *Educational experiences of children in out-of-home care*. Chicago, IL: Chapin Hall Center for Children at the University of Chicago. This report compared children in the Illinois Chicago Public Schools system.
- <sup>4</sup> Cook, R. (1994). Are we helping foster care youth prepare for the future? *Children and Youth Services Review*. 16(3/4), 213-229. Data were collected via in-person and telephone interviews of 810 young adults aged 18-24 years old 2.5 to 4 years after leaving foster care.
- <sup>5</sup> Burley, M., & Halpern, M. (2001). *Educational attainment of foster youth: Achievement and graduation outcomes for children in state care*. Olympia, WA: Washington State Institute for Public Policy.
- <sup>6</sup> Courtney, M.E., Terao, S. & Bost, N. (2004). *Midwest evaluation of the adults functioning of former foster youth: Conditions of youth preparing to leave state care*. Chicago, IL: Chapin Hall Center for Children at the University of Chicago. Wave One of Longitudinal study in three waves following 732 youth age 17 or 18 still in jurisdiction in Illinois, Iowa and Wisconsin as they age out of foster care.
- <sup>7</sup> AFCARS Report #13: Preliminary 2005 Estimates as of September 2006, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/tat/report13.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tat/report13.htm)<sup>8</sup> Id.
- <sup>9</sup> Courtney, M.E., Terao, S. & Bost, N. (2004).
- <sup>10</sup> Wood, D., Halfon, N., Scarlata, D., Newacheck, P., & Nessim, S. (1993). Impact of family relocation on children's growth, development, school function, and behavior. *Journal of American Medical Association*, 270(11), 1134-1338.
- <sup>11</sup> Kerbow, D. (1996). *Patterns of urban student mobility and local school reform*. Technical Report No. 5, October. Washington, DC: Center for Research on the Education of Children Placed at Risk. The data used included students in a stratified, random sample of public elementary schools and sixth-grade students in the Chicago Public Schools in the spring of 1994.
- <sup>12</sup> Pecora, P.J., Williams, J., Kessler, R.C., Downs, A.C., O'Brien, K., Hiripi, E., & Morello, S. (2003). *Assessing the effects of foster care: Early results from the Casey National Alumni Study*. Seattle, WA: Casey Family Programs. Case record reviews and interviews were conducted for 1087 alumni served by the 23 Casey Field offices in operation in 1998.
- <sup>13</sup> For more information about the National Working Group on Foster Care and Education and resources from this group visit [www.casey.org/friendsandfamilies/partners](http://www.casey.org/friendsandfamilies/partners).
- <sup>14</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. (2006). *The AFCARS report No. 13: Preliminary FY 2005 estimates as of September 2006*. Washington DC: U.S. Department of Health and Human Services. Retrieved November 7, 2006, from [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/tat/report13.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tat/report13.htm).

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## Advocates Seek Improvements in Education for Foster Youth

By Sara Woodward

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Foster youth face a daunting array of obstacles in their education. Many school districts and child welfare agencies fail to assume responsibility for monitoring and supporting the education of foster youth. For example, social service agencies frequently change the placements of foster youth mid-semester without considering the impact the move will have on the youth's education. A change in residential placement alone is a disruption in the youth's life that will have negative impacts on school performance. In addition, child welfare agencies and school districts are notorious for failing to share information. This can result in children spending extended periods out of school, awaiting necessary education and medical records to arrive at the new school, so they can enroll.

In other situations, missing records can result in inappropriate educational placements, or cause children to repeat previously completed classes. Once enrolled in a new school, foster youth face new teachers, new classmates, and often a new curriculum. It can take several months for students to recover academically from a change in schools. In addition, school district policies insensitive to the experience of foster youth mean that youth who move mid-semester can face harsh rules regarding the awarding of credits. Such youth may receive no credit at all for work completed at a previous school, solely because they were moved before the end of the semester or school year.

As a result, after years spent in foster care, many high school foster youth are woefully behind in attaining the credits needed for graduation. Finally, in some cases, youth are also denied access to services and extracurricular activities available to other students solely because they are in foster care.

National studies have found that anywhere from 30 percent to 96 percent of foster youth perform below grade level, and 26 percent to 40 percent are held back at least one grade.<sup>1</sup>

In addition, foster youth suffer from disabilities at a much higher rate than non-foster youth. Studies have found that one-quarter to one-third of foster youth are enrolled in special education classes.<sup>2</sup> Finally, foster youth are much less likely to graduate from high school and go on to higher education. One national study found that 46 percent of foster youth had not completed high school within 2.5 to 4 years after exiting care at age 18.<sup>3</sup> In addition, only 15 percent of foster youth enroll in college preparatory classes,<sup>4</sup> and an even lower percentage enroll in post-secondary education. California reports that less than 3 percent of its foster youth go on to four-year colleges.<sup>5</sup>

In December of 2004, a report issued by the Chapin Hall Center for Children at the University of Chicago confirmed what the previous studies have shown—foster youth have poor educational outcomes. The study examined the performance of youth in out-of-home care on standardized tests, the number of youth who are older than their peers in their grade, and the graduation and dropout rates for high school students. In all of these areas, the study found that youth in out-of-home care have significantly worse outcomes than non-foster youth.<sup>6</sup>

These low educational outcomes correspond with equally troubling adult outcomes. For example, one study found that within the first 12 to 18 months after emancipation, 39 percent of foster youth were unemployed, 27 percent of males and 10 percent of females had been incarcerated at least once, and 39 percent were on public assistance.<sup>7</sup>

## Youth Advocates Seek a Better Way

In an innovative approach to increasing educational outcomes for foster youth, advocates and legislators are exploring clarification and expansion of the definition of "homeless" under the federal McKinney-Vento Homeless Assistance Act<sup>8</sup>. In addition, two states have pursued legislative reform granting foster youth increased educational rights under state law.

The McKinney-Vento Homeless Assistance Act<sup>9</sup> recognizes that homeless youth face specific challenges to successfully completing their education. The act, reauthorized in 2002, seeks to give homeless youth increased access to public education, so they can overcome these challenges. The law requires school districts to provide educational stability for homeless students, by allowing them to remain in their school of origin as long as they are homeless, or, once housed, until the end of the academic year, even if they move outside of the school's district of residence.<sup>10</sup> School districts are also responsible for providing transportation to the homeless student's school of origin.<sup>11</sup> In addition, homeless students are entitled to immediate enrollment in school, even if they are missing educational and medical records.<sup>12</sup> Each school district must also appoint an educational liaison for homeless children to ensure the identification, enrollment, and attendance of homeless students.<sup>13</sup>

Significantly for foster youth, the 2002 reauthorization expanded the definition of homeless to include some foster youth.<sup>14</sup> McKinney-Vento defines "homeless children and youths" as "individuals who lack a fixed, regular and adequate nighttime residence."<sup>15</sup> The definition goes on to specifically list "awaiting foster care placement" as a type of homelessness.<sup>16</sup> It is understandable that Congress would extend the protections of McKinney-Vento to some foster youth; children in the state's custody who are in temporary, emergency, and short-term placements experience extreme instability and disruption in their lives. Maintaining school stability can be crucial for these youth, and far preferable to changing schools several times within a short period of time.

While it is clear that at least some foster youth are entitled to the protections of McKinney-Vento, the law and corresponding regulations provide no additional language that explains exactly which youth the phrase "awaiting foster care placement" includes. As professionals working with foster youth know, there is a wide spectrum of possible types of foster care placements, each with a varying degree of permanence.

A foster youth can be placed in a shelter as the result of a safety emergency for days, weeks or months, while the child welfare agency looks for an appropriate foster family home. Another youth might be placed in a group home indefinitely, with the hope that placement in a more family-like setting will become available. Still other youth may be temporarily held in institutional settings, while waiting for the coordination of community mental health treatment, so that they can be placed into a less restrictive environment. All of the youth described are awaiting foster care placement, and arguably entitled to the protections of McKinney-Vento.

## Federal Rules Fail to Clarify Issues

In July 2003, US Department of Education attempted to clarify which youth fall under the phrase "awaiting foster care placement." The department explained that "children and youth who have already been placed in foster care are not considered homeless; children and youth who are awaiting foster care placement are considered homeless."<sup>17</sup> The department directed states to refer to the definition of "foster care" provided in regulations by the Department of Health and Human Services (HHS).<sup>18</sup>

The HHS definition of foster care includes all possible foster care placements, including "emergency shelters, residential facilities, [and] childcare institutions."<sup>19</sup> Therefore, according to USDE, no youth removed from home by a child welfare agency is considered "awaiting foster care," and thus no student in the care or custody of a state agency would qualify for McKinney-Vento's protections. This interpretation renders the phrase "awaiting foster care" meaningless. In July 2004, USDE issued additional non-regulatory guidelines on McKinney-Vento that included the following information in question and answer format:

Q: Are children who are awaiting foster care placement eligible for service under the

#### McKinney-Vento Act?

A: Yes.

As stated [above], children who are awaiting foster care placement are considered homeless and eligible for McKinney-Vento services. Children who are already in foster care, on the other hand, are not considered homeless. LEA (Local Education Agency) liaisons should confer and coordinate with local public social service agency providers in determining how best to assist homeless children and youth who are awaiting foster care placement.<sup>20</sup>

The information above, like that of 2003, fails to sufficiently clarify the phrase "awaiting foster care placement." USDE provides no further elaboration on what specific situations are considered "awaiting foster care placement," and instead only reiterates that youth "in foster care" are not considered homeless. The American Bar Association has urged USDE to "provide an interpretation of 'awaiting foster care placement' ... that will include children and youth placed by public agencies in interim, emergency, or short-term placements to assure such children and youth in temporary out-of-home settings have uninterrupted educational access."<sup>21</sup> Such guidance would establish that the most unstable foster youth are entitled to protection under McKinney-Vento.

#### Massachusetts, Tennessee Take the Initiative

Individual states, however, are not waiting for additional USDE guidance. In January, the Massachusetts Department of Education and Department of Social Services sent a joint letter to USDE explaining their interpretation of "awaiting foster care placement." The letter explained that the two states had agreed that "children and youth in the state's care or custody who are living in emergency, temporary or transitional housing are homeless as defined by the McKinney-Vento Homeless Assistance Act."<sup>22</sup> The Massachusetts departments further agreed that youth placed into shelters, emergency foster care, and temporary group home settings are homeless as defined by McKinney-Vento.<sup>23</sup> In response, USDE approved of their approach, and in March, the departments implemented their interpretation.<sup>24</sup>

Tennessee has also extended McKinney-Vento protections to some foster youth. The administrative policies for Tennessee's Department of Children's Services state:

If the youth is in a temporary, emergency type of placement, it is the Department's expectation that the child/youth remain in his old school if possible and if it is in the child's best interests. The local school system has the first obligation to provide transportation, under the McKinney-Vento Homeless Education Act of 2001, but if they do not provide transportation, the DCS case manager may have to transport the child/youth back and forth to the old school, until his/her placement is made in a more permanent setting.<sup>25</sup>

Tennessee also is seeking to develop an interagency agreement, similar to Massachusetts, between its Department of Child Services and Department of Education.

McKinney-Vento can only be read to include some foster youth. While states have the flexibility to include youth in temporary and emergency foster care placements, the language of the act still clearly distinguishes between those "awaiting foster care placement" and those in foster care placements. Therefore, when attempting to increase access to public education for foster youth through McKinney-Vento, states are limited in which youth will be covered. In order to address the educational challenges faced by youth in long-term and permanent placements, advocates must look to amending state law.

#### California's Assembly Bill 490

In 2003, California passed legislation that extends many of the rights and protections afforded to homeless youth under McKinney-Vento to foster youth under California state law. Assembly Bill 490 (AB 490), which became effective Jan. 1, 2004 is the first state law to provide a complete set of educational rights for foster youth. AB 490 includes provisions intended to increase school stability for foster youth, to ensure that foster youth are placed in mainstream educational environments, to improve the transfer of records process between schools, and to allow partial credits for classwork.

#### School Stability

When placing agencies recommend an out-of-home-placement or a change in residential placement for a foster child, AB 490 requires that they consider the impact that the move will have on the youth's educational stability.<sup>26</sup> In addition, when a child's residential placement is changed, the child has the right to remain in his or her school of origin for the duration of the school year, provided that it is in the child's best interest to do so.<sup>27</sup> This right, and the definition provided for "school of origin," mirrors the McKinney-Vento Act.<sup>28</sup>

AB 490 departs significantly from McKinney-Vento on the issue of transportation. McKinney-Vento requires that school districts provide transportation for homeless students to remain in their school of origin,<sup>29</sup> but AB 490 is silent on the issue, and does not assign responsibility to either the child welfare agency or the school district. An early version of the bill required school districts to provide transportation, but when it became apparent that the bill would not pass if it included such an expensive provision, the language addressing transportation was removed.

### **Transfer Procedures**

When foster youth change schools, AB 490 seeks to ensure that the transfer will proceed as smoothly as possible. Again, AB 490 provides many of the same protections as McKinney-Vento. First, AB 490 provides foster youth with a right to immediate enrollment in school, even if the child is missing the academic and medical records normally required for enrollment, or even if the youth owes fees or materials to the former school.<sup>30</sup> In addition, similar to McKinney-Vento, every school district must appoint an educational liaison for foster children; the liaison is responsible for ensuring proper school placement and enrollment in school, and assisting with the transfer of grades, credits, and records when youth transfer between schools.<sup>31</sup>

AB 490 also provides specific procedural requirements for record transfers when foster youth change schools. The law stipulates that both the child welfare agency and the school district are responsible for ensuring the timely transfer of records.<sup>32</sup> The transfer process begins with the placing agency, and as soon as the child welfare worker becomes aware of the need to transfer a student to a new school, the worker must notify the school of the day the student will need to transfer out.<sup>33</sup> The school the youth is leaving must transfer the student's educational record to the next school within two business days of the student's move.<sup>34</sup> Once the youth arrives at the new school, that school has two business days to contact the old school and request the youth's records.<sup>35</sup>

### **School Placement**

AB 490 includes a presumption that foster youth will be placed in an educational program operated by the local school district, unless the person holding the right to make educational decisions for the youth determines it is in the child's best interest to be placed in an alternative program, or the youth has an individualized education program (IEP) requiring a different placement.<sup>36</sup> This presumption seeks to combat the disproportionate placement of foster youth into non-mainstream or alternative educational environments.

### **Grades and Credits**

AB 490 prohibits a school from lowering the grades of a foster youth for absences caused by a change in placement, appearance at a court hearing, or another court ordered activity.<sup>37</sup> AB 490 also requires that schools in California provide all students (not just foster youth) with credit for full or partial coursework completed at another public school or at a juvenile court school.<sup>38</sup>

AB 490 gives the child welfare agency access to the child's educational records without parental consent or a court order.<sup>39</sup>

### **Florida's Interagency Agreement Bill**

In 2004, Florida passed House Bill 723 (HB 723), which requires the state's Department of Children and Family Services (DCFS) and Department of Education to develop an interagency agreement regarding the education of dependent children or children in shelters.<sup>40</sup> The agreement facilitates the delivery of services or programs to children in shelter and foster care.<sup>41</sup> Under HB 723, DCFS will provide training for caseworkers, foster parents, surrogate parents, biological parents, and pre-adoptive parents regarding the education of youth in shelter and foster care.<sup>42</sup>

In addition, the Florida law requires that DCFS enter into agreements with local school districts regarding education for shelter and foster youth. The local agreements must include provisions

requiring DCFS to enroll youth in school, to promote school stability, and to establish a protocol for sharing information with the school district.<sup>42</sup> The local agreements will require local school districts to determine whether transportation is available to promote school stability, and to work with DCFS to seek federal, charitable, or grant funding for such transportation.<sup>43</sup> Finally, DCFS and the local school districts must cooperate to access special education services for foster youth with disabilities.<sup>44</sup>

HB 723 became effective on July 1, and advocates in Florida are currently working with DCFS and the Florida Department of Education to develop the interagency agreement. The Agency for Workforce Intervention has also joined the negotiations to address the need for transition services for youth aging out of care. In 2003, in Broward County, DCFS and the local school board developed an interagency agreement regarding the education of youth in foster care.<sup>45</sup> This agreement is likely to be a model for the agreements under HB 723.

Oregon and Pennsylvania are currently considering legislative approaches to improving educational outcomes for foster youth. The National Center for Youth Law will continue to track legislative developments across the country. Advocates interested in developing legislative approaches for their states should contact Sara Woodward at (510) 835-8098, ext. 3002.

*Sara Woodward is a Skadden Fellow at NCYL, focusing on the educational needs of at-risk children. She is working to implement AB 490 in California.*

## Endnotes

<sup>1</sup> Elisabeth Yu et al., *Improving Educational Outcomes for Youth in Care, A National Collaboration* vii (CWLA Press, 2002).

<sup>2</sup> Pamela Choice et al., *Education for Foster Children: Removing Barriers to Academic Success* 13 (Bay Area Social Services Consortium 2001).

<sup>3</sup> Ronna J. Cook, *Are We Helping Foster Youth Prepare for Their Future?*, 18 *Child & Youth Services Rev.* 213 (1994).

<sup>4</sup> Wendy Whiting Blome, *What Happens to Foster Kids: Educational Experiences of a Random Sample of Foster Care Youth and a Matched Group of non-Foster Care Youth*, 14 *Child and Adolescent Social Work Journal* 41-53 (1997).

<sup>5</sup> California Department of Social Services, Data Systems and Survey Design Bureau, *Independent Living Program, Annual Statistical Report (2002)*, [www.dss.cahwnet.gov/research/res/pdf/Soc405a/2003/SOC405AOct02-Sep03.pdf](http://www.dss.cahwnet.gov/research/res/pdf/Soc405a/2003/SOC405AOct02-Sep03.pdf).6

<sup>6</sup> Cheryl Smithgall et al., *Educational Experiences of Children in Out-Of-Home-Care*, Chapin Hall Center for Children at the University of Chicago (2004), [www.chapinhall.org/article\\_abstract\\_new.asp](http://www.chapinhall.org/article_abstract_new.asp)

<sup>7</sup> Mark Courtney & Irving Piliavin, *Foster Youth Transitions to Adulthood: Outcomes 12 to 18 Months after Leaving Out-Of-Home Care* (1998).

<sup>8</sup> 42 U.S.C. § 11431 et seq.

<sup>9</sup> 42 U.S.C. § 11431 et seq.

<sup>10</sup> 42 U.S.C. § 11432 (g)(3)(A).

<sup>11</sup> *Id.* at (g)(4).

<sup>12</sup> *Id.* at (g)(3)(C).

<sup>13</sup> *Id.* at (g)(1)(J)(ii), (g)(6).

<sup>14</sup> 42 U.S.C. § 11434a (2)(B)(i).

<sup>15</sup> *Id.* at (2)(A).

<sup>16</sup> *Id.* at (2)(B).

<sup>17</sup> Email from Gary Rutkin, Student Achievement and School Accountability Programs, U.S. Department of Education, to McKinney-Vento state coordinators (July 22, 2003).

<sup>18</sup> *Id.*

<sup>19</sup> 45 C.F.R. 1355.20

<sup>20</sup> U.S. Department of Education, *Education for Homeless Children and Youth Program, Non-Regulatory Guidance* 18 (July 2004), [www.ed.gov/programs/homeless/guidance.doc](http://www.ed.gov/programs/homeless/guidance.doc).

<sup>21</sup> American Bar Association, Commission on Homelessness & Poverty, Steering Committee on the Unmet Legal Needs of Children, Commission on Domestic Violence, Commission on Mental and Physical Disability Law, Section of Family Law, Recommendation (adopted Aug. 9-10 2004), [www.abanet.org/leadership/2004/annual/dailyjournal/113.doc](http://www.abanet.org/leadership/2004/annual/dailyjournal/113.doc).

<sup>22</sup> Letter from David P. Driscoll, Massachusetts Commission of Education, and Harry Spence, Massachusetts Commissioner of Social Services, to Gary Rutkin, Student Achievement and School Accountability Programs, U.S. Department of Education (Jan. 30, 2004).

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> State of Tennessee Department of Children's Services, Administrative Policies and Procedures: 21.14, Serving the Educational Needs of the Child/Youth in DCS Custody, Classified as Receiving Level 1 or Level 2 Services, Effective May 1, 2003, D-1, [www.state.tn.us/youth/policies/Chapter%2021%20Education/21-14%20Serving%20The%20Educational%20Needs%20of%20The%20Child-Youth%20in%20.pdf](http://www.state.tn.us/youth/policies/Chapter%2021%20Education/21-14%20Serving%20The%20Educational%20Needs%20of%20The%20Child-Youth%20in%20.pdf).

<sup>26</sup> Cal. Welf. & Inst. Code § 16501.1(c).

<sup>27</sup> Cal. Educ. Code § 48853.5.

<sup>28</sup> Id.

<sup>29</sup> 42 U.S.C. § 11432 (g)(4).

<sup>30</sup> Cal. Educ. Code § 48853.5.

<sup>31</sup> Id.

<sup>32</sup> Cal. Educ. Code § 49069.5.

<sup>33</sup> Cal. Educ. Code § 49069.5.

<sup>34</sup> Id at (d).

<sup>35</sup> Cal. Educ. Code § 48853.5 (d)(4)(C).

<sup>36</sup> Cal. Educ. Code § 48853.

<sup>37</sup> Cal. Educ. Code § 49069.5 (g)(h).

<sup>38</sup> Cal. Educ. Code § 48845.5.

<sup>39</sup> Cal. Educ. Code § 49076.

<sup>40</sup> Id. at § 3, adding Fla. Stat. § 39.0016 (1)(a).

<sup>41</sup> Id. at § 3, adding Fla. Stat. § 39.0016 (3)

<sup>42</sup> Id. at (5).

<sup>43</sup> Id. at (4)(a).

<sup>44</sup> Id. at (4)(b).

<sup>45</sup> Id. at (4)(c).

<sup>46</sup> Interagency Agreement between the School Board of Broward County, Florida and the Florida Department of Children and Families, District 10, [www.floridaschildrenfirst.org/04\\_reports/proj/Education/National/F\\_6\\_20EXEC\\_3Aagree.pdf](http://www.floridaschildrenfirst.org/04_reports/proj/Education/National/F_6_20EXEC_3Aagree.pdf).

**FOSTER CARE/EDUCATION STATE LEGISLATION AND REGULATIONS**

**DRAFT**

Kathleen McNaught, ABA Center on Children and the Law

	WHO COVERED?	RIGHT TO REMAIN IN SCHOOL OF ORIGIN	TRANSPORTATION	IMMEDIATE ENROLLMENT	EXPEDITED RECORD TRANSFERS	DESIGNATED STAFF RESOURCE	OTHER
<p><b>NATIONAL:</b> <b>McKINNEY VENTO ACT</b></p> <p><u>Reauthorized:</u> 1/02</p>	<p>Child or youth without a fixed regular and adequate nighttime residence (includes all or some children in foster care depending on state law and/or interpretation)</p>	<p>Yes, when feasible. Right remains for entire time they are homeless or through the end of the school year if they find permanent housing</p>	<p>School district must provide or arrange transportation.</p>	<p>Yes, even if do not have immunizations or immunization records, physical examinations or medical records; school records; proof of residency; parent or legal guardian; birth certificates; and/or other documents.</p>	<p>[No mention of expedited]. New School must call the student's last school to get records and last school must send. "in a timely fashion"</p>	<p>Every school district must designate an appropriate staff person as a local educational agency liaison for students in homeless situations.</p>	<p>Prohibits segregation or stigmatization of homeless youth.</p>
<p><b>CALIFORNIA:</b> <b>CA EDUC §900.5 AB 400</b></p> <p><u>Approved:</u> 10/12/03</p> <p><u>Effective:</u> 1/1/04</p>	<p>Supervised by either the county probation or child welfare agency, and In, or have been in, relative, kin, foster family or group home placements</p>	<p>If the child's placement changes, the child has the right to remain in his or her school of origin for the duration of the school year, provided it is in the child's best interest to do so.</p>	<p>[no mention of who pays for transportation]</p>	<p>When a foster child changes schools, the new school must provide for immediate enrollment and attendance even if the child is missing: Academic and medical records, Immunization records, Proof of residency, or School uniform Or fees or materials are owed to the prior school</p>	<p>County placing agency shall notify school immediately with date student leaving and request for transfer; local school shall then within 2 days transfer pupil and deliver records (including determination of seat time, full or partial credits earned, classes, grades, immunizations, and IEP); new school shall contact last school attended to obtain records within 2 days of request for enrollment</p>	<p>Requires each local educational agency to designate a staff person as the educational liaison for foster children</p>	<ul style="list-style-type: none"> <li>-No lowering of grades for time out of school resulting from a new placement or time in court.</li> <li>-Requires school to accept full or partial credit for coursework completed, including in a non-public institution.</li> <li>-Decision regarding placement should take into account proximity to child's school attendance area in order to promote educational stability.</li> <li>-Case workers and probation officers can access a foster child's school records without parental consent or a court order</li> </ul>

<p><b>ARIZONA:</b> ACA 9-27-103 ACT 1255</p> <p><u>Approved:</u> 3/10/05</p> <p><u>Effective:</u> 8/22/05</p>	<p>Children in foster care</p>	<p>Yes, school shall, UNLESS court finds not in child's best interest AND conflicts with other law excluding residency requirement [No mention of duration of school of origin]</p>	<p>To extent reasonable and practical, school is encouraged to work out plan</p>	<p>In a timely manner, when determined necessary, appropriate, and in their best interest. Caseworker must contact new school within 2 days of needing to reenroll school must immediately enroll (d)(1) even if the foster child is unable to produce any required clothing or required records</p>	<p>Foster care liaisons shall expedite. FCL in new school must request records within 3 days of move; FCL from old school must provide records to new school within 10 days of receiving request.</p>	<p>Every school district will have a liaison</p>	<p>-No lowering of grades for time out of school resulting from a change in enrollment, time in court, or time at court-ordered counseling or treatment. -Requires school to accept credit coursework when the child demonstrates satisfactory completion of the appropriate education placement assessment.</p>
<p><b>DELAWARE:</b> 14 Del.C. 222 (c) HB279 <u>Revised:</u> 6/22/05 <u>Effective:</u> 7/7/05</p>	<p>Include all children in foster care in definition of "awaiting foster care placement" (children in the care and custody of the child welfare agency who are in foster care)</p>	<p>Same as M-V</p>	<p>Same as M-V</p>	<p>Same as M-V</p>	<p>Same as M-V</p>	<p>Same individual as M-V</p>	
<p><b>VIRGINIA:</b> SB 1006 §32-900(D) §22.1-3.4 §22.1-289</p> <p><u>Approved:</u> 3/21/05</p>	<p>Children placed in foster care</p>	<p>Yes, if agreed to by both sending and receiving school and child welfare agency agrees that in child's best interest.</p>	<p>[silent on transportation] The sending and receiving school divisions shall cooperate in facilitating the enrollment of any child placed in foster care across jurisdictional lines</p>	<p>Yes, even if child welfare agency enrolling child cannot produce required documents. Person enrolling must provide written statement, to best of knowledge, of child's age, good school standing, good health status and free from contagious or communicable diseases. Within 72 hours of placement, child welfare</p>	<p>Sending and receiving school districts required to expedite transfer of education records when receive notice that a child in foster care has moved. A school system memorandum on implementation of this law construes this to mean immediate.</p>	<p>None</p>	<p>Receiving school division shall be accorded foster children education payments</p>

Will only apply to children who are subjects of foster care placements through entrustments or commitments to the local social services board or licensed child-placing agency and will not apply to children whose parents have an agreement with the local board or public agency through the community policy and management team where legal custody remains with the parents.

				agency is required to notify principal of new school and the superintendent (or designee) of the relevant school division, and to inform the principal of the status of the parental rights.			
<b>OREGON:</b> <b>HB 3075</b> <b>OR LEGIS</b> <b>521 (2005)</b> <b>O.R.S.</b> <b>§39.133</b> <b>O.R.S.</b> <b>§38.575</b> <b>Approved:</b> <b>7/15/05</b> <b>Effective:</b> <b>7/1/2005</b>	Child placed by public or private agency in substitute care program	Yes, if determined by juvenile court to be in the child's best interest to do so. May continue in that school through the highest grade level in that school	Child welfare agency (only when funds have been designated for this purpose) responsible for providing the child with transportation to and from school when the need for transportation is due to the placement by the public agency	No provision	For student in substitute care programs, new school shall request records from old school within 5 days of student seeking initial enrollment; old school shall transfer records no later than 5 days after receipt of the request (for other students the requirement is 10 and 10).	None	
<b>WASHINGTON:</b> <b>SB 739</b> <b>WA ST</b> <b>26A.00C.800</b> <b>WA ST</b> <b>26A.03C.005</b> <b>Effective:</b> <b>4/2/2002</b> <b>AND</b> <b>HB 1258</b>	Children placed in foster care	Whenever practical and in the best interest of the child, child shall remain enrolled in the schools they were attending at the time they entered foster care. Administrative regions of the child welfare agency shall develop protocols with respective school	No provision	No provision	No provision	None	<ul style="list-style-type: none"> <li>- Requires the department (of social and health services) to establish a work group to prepare a plan for the legislature by November 2002 addressing educational stability for children in foster care</li> <li>- Requires the department (of social and health services) to establish an oversight committee composed of staff from the</li> </ul>

DESS has earmarked \$350,000 in SOC flex funds for each school year during the 2005-07 biennium for this purpose.

<p><b>WAST 74.13</b></p> <p><b>Effective:</b> 7/27/03</p>		<p>districts specifying strategies for communication, coordination and collaboration regarding status and progress of foster children, in order to maximize educational continuity and achievement.</p>				<p>children's administration of the department, the office of the superintendent of public instruction, and advocacy agencies to develop strategies and identify best practices</p> <ul style="list-style-type: none"> <li>- Establishes a pilot program in 2 school districts concluding in June 2003 to provide information to the work group; child shall stay unless not in the child's best interests; school systems must negotiate transportation and child welfare agency will not pay</li> </ul>
<p><b>FLORIDA:</b> <b>HB 723</b></p> <p><b>Approved:</b> 6/23/04</p> <p><b>Effective:</b> 7/1/04</p>	<p>Children found to be dependent or in shelter care</p>	<p>Goal that child welfare and education agencies shall enter into agreements that will provide for continuing the enrollment of a child known to the department at the same school, if possible</p>	<p>Include requirement that district school board shall determine whether transportation is available when it is needed to avoid a school change; Recognizing that school of origin is preferable unless continuing would be unsafe or impractical, agency and school board shall assess availability of federal, charitable, or grant funding for such transportation.</p>	<p>No provision</p>	<p>No provision</p>	<p>None</p> <ul style="list-style-type: none"> <li>- Agreement between agencies should also provide for information sharing about children to assist in obtaining education and related services for the benefit of the child</li> <li>- Requires training coordinated with local school districts for caseworkers and foster parents including information on the right of the child to an education, the role of an education in the development and adjustment, proper ways to access education and related services, and the importance and strategies for parental</li> </ul>

							involvername
<b>MARILAND:</b> SB CS MD EDUC §-206 and §-501 through §8- 504  Approved: 5/10/05  Effective: 7/1/2005	Any child in child welfare agency care	No provision	No provision	Placing agency shall (or others may) notify new school of enrollment	-Requires new school to notify old school of transfer w/in 2 days and make written request for records. -Requires old school to immediately inform the receiving school orally of the child's last enrolled grade level and status under the Rehabilitation Act or IDEA - Requires old school to transfer education and medical records to new school within 3 days of receipt of written notice.	None	
<b>PENNSYVA</b> <b>NIA</b> REGULATIONS 22 PA CODE Ch. 11.11  Approved: 10/22/04  Effective: 10/23/04	All children that move schools (not just children in foster care)	No provision	No special provision	School shall normally enroll child the next business day, but no later than 5 business days of application. No obligation to enroll without proof of the child's age, residence, and immunizations.	New school must request education records from old school. Old school shall forward records within 10 business days of receiving request.	None	
<b>ILLINOIS:</b> 105 ILCS 5/10-20.12B Effective: 1/1/97	All students	If it is in the child's best interests, no need to pay tuition to return to former school district.	No provision	No provision	No provision	None	
<b>NEW</b> <b>HAMPSHIRE:</b> N.H. Rev. Stat. §293:27 - §293:30	Any school-aged child placed in any home for children, or placed by HHS in the home of a relative or friend	If in the best interests of the child as determined by the court AND if the placement home is	Excessive cost eliminates right to remain	No provision	No provision	None	

	of the child, including foster children.	reasonably close to the school of origin, AND if transportation can be arranged without excessive cost to the school system or HHS					
<b>MISSOURI:</b> Domestic James Memorial Foster Care Reform Act of 2004 Approved: 6/29/04  Effective: 7/2/04	Any child placed by the children's division where the placement results in the child attending a new school	Upon request of the foster family, the guardian ad litem, or the volunteer advocate and whenever possible, the child is permitted to remain	No provision	No provision	The records from such school shall automatically be forwarded to the school that the child is transferring to upon notification within two business days by the [children's] division	None	
<b>MISSOURI:</b> SBE 18 Approved: 4/18/90 Effective: 6/5/89 (retroactive)	Child requesting a transfer as a result of a foster care placement, adoption, or other factors who is not currently using open enrollment	Parent or guardian of the child may have the child remain in the original school under open enrollment	Parent or guardian is responsible for transportation to and from a regular school bus route of the receiving district; if the pupil meets the Board of Ed economic requirements, the sending district is responsible	No interruption in the child's education		None	No fees paid to the former school until the start of the first full year of enrollment
<b>OHIO:</b> R.C.S. 3313.04	Child under 22 entitled to attend a school at the end of the first full week of October who has relocated outside of	May attend for the balance of the school year IF the Board of Ed in that school district has adopted this policy AND the	Child is entitled to transportation services pursuant to an agreement between the districts; if there is				Child is not entitled to attend the following school year

	the school district but in the same county	child's parent provides written notification to both school superintendents	no agreement, child gets transportation services based on interdistrict open enrollment				
<b>NEW YORK:</b> McKinney's Education Law § 3209 Approved: 7/26/94 Effective: 8/25/94	"Homeless child" does not include children in foster care						
<b>TEXAS:</b> §25.001 Approved: 5/30/95 Effective: 5/30/95	Student enrolled in high school in grade 9, 10, 11, or 12 who is placed in temporary foster care in a new school district or attendance area	Entitled to complete high school at the school in which the student was enrolled at the time of placement without payment of tuition					

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 191  
 () Publish Date: \_\_\_\_\_

Identifier (file name): SB 191: SB191-DEED-TLS-02-29-08  
 Title An Act relating to the continuing education of homeless students.

Dept. Affected: Education & Early Development  
RDU Teaching & Learning Support  
School & Student Achievement

Sponsor Senator Davis  
 Requester Senate HESS Component Number 2796

**Expenditures/Revenues** (Thousands of \_\_\_\_\_)  
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
TOTAL							
Other Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

This Act provides for the continuing education of homeless students in the student's school of origin prior to homelessness.

The Department of Education and Early Development does not anticipate any additional costs from this legislation.

Prepared by: Richard Luther  
 Division: Commissioner's Office  
 Approved by: Barbara Thompson, Interim Commissioner

Phone 465-2803  
 Date/Time 2/29/08 8:45 AM  
 Date 2/29/2008

**FISCAL NOTE**

**STATE OF ALASKA  
2008 LEGISLATIVE SESSION**

**BILL NO.** \_\_\_\_\_

**ANALYSIS CONTINUATION**

# FISCAL NOTE

**STATE OF ALASKA  
2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 191  
 ( ) Publish Date: \_\_\_\_\_  
 Dept. Affected: Health & Social Services  
 RDU: Children's Services  
 Component: Front Line Social Workers

ID (File name) SB191-DHSS-FLSW-02-29-08  
 Title: PUBLIC EDUCATION OF HOMELESS STUDENTS  
 Sponsor: DAVIS  
 Requester: SENATE (HES)

Component No. 2305

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
<b>CHANGE IN REVENUES (0)</b>							

**FUND SOURCE (Thousands of Dollars)**

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1037 GF/Mental Health							
Other (Specify Type-do not abbreviate)							
Other (Specify Type-do not abbreviate)							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**ANALYSIS:** *(Attach a separate page if necessary)*

The intent of SB 191 is to ensure continuing education of a homeless student in the student's school of origin, and to provide comparable education services during the time period a child is considered homeless. A child is considered homeless if he or she is "awaiting foster care placement." This would include all students placed in out-of-home care and in the custody of the Department of Health and Social Services.

Under the assumption that the Department of Education and Early Development will be responsible for transportation costs to and from the location where the child is placed and the child's school of origin, this bill will have nominal fiscal impact on the Office of Children's Services.

Prepared by: Tammy Sandoval, Director Phone 465-3191  
 Division: Office of Children's Services Date/Time 01/15/2008  
 Approved by: Karleen Jackson, Commissioner Date 02/29/2008  
 Agency: Department of Health and Social Services

# LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY  
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State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 28, 2008

**SUBJECT:** Sectional Summary of SB 191 (public education of homeless students) (Work Order No. 25-LS1075\C)

**TO:** Senator Bettye Davis  
Attn: Tom Obermeyer

**FROM:** Kathryn L. Kurtz *KLK*  
Assistant Revisor

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Adds a new section to AS 14.03 requiring school districts to comply, to the extent feasible, with the requirements of the federal McKinney-Vento Homeless Education Assistance Improvement Act of 2001 for continuing the public education of a homeless student in the student's school of origin and for providing comparable education services during the homelessness.

**Section 2.** Amends the purpose section of Title 47, Welfare, Social Services and Institutions, to include securing an adequate education for children, to require consideration of the child's intellectual welfare, and to provide for the education of a child when planning for permanent placement of that child.

**Section 3.** The existing AS 47.05.065 offers a legislative finding that it is in the best interests of a child who has been removed from the child's own home for the state to apply certain principles in resolving the child's situation. This bill section adds to this list of principles the principle that a child should continue to attend the child's school of origin.

KLK:ljw  
08-122.ljw

**SB**

**206**

# Alaska State Legislature

*Interim (May - Dec.)*  
716 W 4<sup>th</sup> Ave  
Anchorage, AK 99501  
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State Capitol, Suite 30  
Juneau, AK 99801-1182  
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Toll free: (800) 770-3822

[Senator Bettye Davis@legis.state.ak.us](mailto:Senator.Bettye.Davis@legis.state.ak.us)  
<http://www.akdemocrats.org>

## Senator Bettye Davis

### CS for Senate Bill 206( ), 25-LS1198\E

**"An Act repealing the Alaska Children's Trust; establishing conditions for a grant of the balance of the Alaska Children's Trust; designating certain receipts as available for grants to the Alaska Community Foundation; and providing for an effective date."**

### SPONSOR STATEMENT

The Alaska Children's Trust is one of 52 trusts in the United States created by state statute, territory, or District of Columbia to prevent child abuse and neglect. ACT is the second largest endowment, at about \$12 million. Over 40 of the Trusts have no endowment at all but are dependent upon annual state allocation and dedicated funding streams, federal monies and private funding. Like many states, ACT receives funds from special request children's trust license plates, receipts for birth certificates suitable for display, and heirloom certificates of marriage. Twenty-eight states also receive federal CB-CAP (Community-Based Child Abuse Prevention Programs) funds. These funds are based on child population and Child Abuse and Neglect reports. Alaska's annual allotment is about \$235,000 and is matched at 20% by the Office of Children's Services and distributed to "Tribes." OCS grantees in 2007 receiving CBCAP funds served 356 families.

SB 206 was introduced to privatize the Alaska Children's Trust (ACT) in response to concerns by the Board of Trustees of ACT that the state has not provided consistent staffing; that investment policies did not produce desired results to increase grant-making; that administration produced a lack of small grassroots grant applicants; that the Trust would be subject to the vagaries and whims of changing political leadership; and realization that tension between treatment and prevention is inescapable with a state setting, where the Trust is focused on prevention. As a result the Board commissioned The Giving Practice, a consulting service of Philanthropy Northwest of Seattle, to provide an independent report with various ways to solve persistent problems. The lengthy report of March 17, 2006 discussed the pros and cons of the following options:

1. Eliminate the Trust activities and turn funds over to state
2. Stay with the state – but with negotiate operational and state changes

3. Donor-advised fund with Alaska Community Foundation
4. Use the Foraker Group as Fiscal/Operational Sponsor
5. Merge with Friends of Alaska Children's Trust
6. Become a new independent 501(c)(3) public charity

The Board voted to privatize the trust, i.e., have a donor-advised fund with the Alaska Community Foundation. The result is SB 206. Although the consultants' report pointed out that Alaska Community Foundation and Friends of Alaska Community Trust may offer little more than a shell structure with limited organizational capacity and more administrative and fund management expenses, the Board felt a substantial change was needed.

The 2006 consultants' report confirmed a number of concerns of the Board including:

- 1) Inconsistent staffing that changed over time (from full-time dedicated staff to part-time staff) and moved from department to department and individual to individual.
- 2) Concern about how changes in the administration might influence how strongly the Trust's work was supported by the State.
- 3) A desire to achieve different investment goals than had been followed up to present.
- 4) Lack of ability to reach small, grassroots organizations with grant support due to a cut back in Trust staffing and the required use of the State's long and complex grant application form.
- 5) Difficulties experienced by Friends of the Alaska Children's Trust (FACT), a separate 501(c)(3) organization, in raising funds from donors who wished to support specific programs (such as dollars to increase grants to parenting education programs) vs. adding to the Trust's corpus held by the State, which was the only current option.
- 6) Inability of ACT Board to exercise its responsibilities in using almost \$1,000,000 in federal funds appropriated to the ACT over a two-year period. Current ACT statute does not allow donations to ACT to be used for programming. Such funds, therefore, must be currently be funneled through state government or to Friends of the Alaska Children's Trust.
- 7) The limited dollars available for annual grant-making (currently the portion of interest income from the Trust, released by the Department of Revenue, minus selected administrative expenses, is relatively small – about \$348,000 – and limited by statute to a maximum amount. The Board felt this impaired the Trust's ability to leverage its small annual budget to assist efforts in the state to prevent child abuse and neglect.
- 8) The Board felt that while current staffing by an employee of Office of Children's Services was useful in the flow of information, it unavoidably tended to change the goal and priority of ACT from prevention to treatment of those children already suffering from abuse and neglect.

Although Alaska statute allows for the appropriation of up to \$150,000 from the principal of the ACT annually for operating expenses, it has not been the practice of the Trust. ACT income available for spending in 2004 was \$342,689, and \$364,412 in 2005 per page 14 of the 3/17/06 consulting report. Page 15 of the report was more telling in showing surpluses of unspent grant money available in those years of \$42,111 and \$82,305 respectively. This seeming anomaly may be explained by the dramatic drop in Administrative expenses from \$117,900 in 2002 to \$85,900 in 2003 to \$9,500 in 2004 to \$31,300 in 2005. This indicates that staffing became part-time during this period while inadequate disbursements resulted in surpluses. Contrary to the Board's initial contention, the report found actual management expenses charged by the Department of Revenue remained consistently low, at about \$35,000 or 3/10 of 1% of the

**\$12 million corpus. Management fees for Alaska Community Foundation were estimated at .84 of 1%, more than twice as much. But it is anticipated the benefits may offset the costs.**

**In summary, the Board of ACT has concluded that something needs to be done to improve the performance ACT to help accomplish its mission of prevention of abuse and neglect of children. In moving from department to department, employees of ACT have not had the benefit of institutional memory in managing this large endowment. The Department of Revenue, while it charges very little for its services, considers the investment of the corpus of ACT a very small part of its operation, not requiring a great deal of its attention. Privatizing ACT through SB 206 is a viable and perhaps preferred option unless, as suggested by the consulting group, the state can satisfactorily address the Board's concerns without change in structure.**

25-LS1198E  
Mischel  
2/28/08

**CS FOR SENATE BILL NO. 206( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): SENATOR DAVIS**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act repealing the Alaska children's trust; establishing conditions for a grant of the**  
2 **balance of the Alaska children's trust; designating certain receipts as available for**  
3 **grants to the Alaska Community Foundation; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **\* Section 1. AS 18.50.225(d) is amended to read:**

6 (d) The legislature may use the annual estimated balance of the account  
7 maintained by the commissioner of administration under AS 37.05.142 to make an  
8 appropriation for a grant to a named recipient under AS 37.05.316 to the Alaska  
9 Community Foundation to hold in trust for child abuse and neglect treatment  
10 and prevention activities and programs [TO THE ALASKA CHILDREN'S TRUST  
11 ESTABLISHED UNDER AS 37.14.200].

12 **\* Sec. 2. AS 18.50.272(e) is amended to read:**

13 (e) The legislature may use the annual estimated balance of the account  
14 maintained by the commissioner of administration under AS 37.05.142 for the fees

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paid for heirloom certificates of marriage under (b) of this section to make an appropriation for a grant to a named recipient under AS 37.05.316 to the Alaska Community Foundation to hold in trust for child abuse and neglect treatment and prevention activities and programs [TO THE ALASKA CHILDREN'S TRUST ESTABLISHED UNDER AS 37.14.200].

\* Sec. 3. AS 28.10.181(t) is amended to read:

(t) Special request Alaska children's trust plates. Upon application by the owner of a motor vehicle, the department may design and issue registration plates representing the Alaska children's trust [UNDER AS 37.14.200]. The department may disapprove the issuance of registration plates under this subsection when the requested plates are a duplication of an existing registration.

\* Sec. 4. AS 28.10.421(d)(14) is amended to read:

(14) special request Alaska children's trust plates ..... \$100 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by this paragraph shall be collected only on the first issuance and the replacement of special request plates; the commissioner of administration shall separately account for the fees received under this paragraph that the department deposits in the general fund; notwithstanding (g) of this section, the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by the legislature as a grant to a named recipient under AS 37.05.316 to the Alaska Community Foundation for deposit into the principal of the Alaska children's trust [UNDER AS 37.14.200];

\* Sec. 5. AS 37.05.146(c)(20) is repealed and reenacted to read:

(20) receipts for birth certificates suitable for display (AS 18.50.225), heirloom certificates of marriage (AS 18.50.272), and special request Alaska children's trust plates (AS 28.10.421(d)(14));

\* Sec. 6. AS 37.14.200, 37.14.210, 37.14.220, 37.14.225, 37.14.230, 37.14.240, 37.14.250, 37.14.260, and 37.14.270 are repealed.

\* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to read:

NAMED RECIPIENT GRANT OF ALASKA CHILDREN'S TRUST. Before a grant

1 to a named recipient is awarded that transfers the balance of the Alaska children's trust, the  
2 Department of Commerce, Community, and Economic Development shall prepare and  
3 execute an agreement with the named recipient that describes grant conditions that, in  
4 addition to usual and customary provisions, include the following:

5 (1) the grantee shall agree to act as the custodian and trustee of the grant  
6 funds;

7 (2) the grant funds shall be managed as an endowment fund;

8 (3) the endowment trust shall be administered for the benefit of community-  
9 based programs and projects in the state that aid in the prevention of child abuse and neglect;

10 (4) the grantee shall consult with an advisory group consisting of the  
11 commissioner of health and social services, the commissioner of education and early  
12 development, and seven public representatives appointed by the governor;

13 (5) the grantee shall annually report the conditions and investment  
14 performance of the grant funds to the commissioner of revenue and the board; and

15 (6) if the grantee materially breaches a condition of the grant agreement set  
16 out in this section, the balance of the grant reverts to the state.

17 \* Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to  
18 read:

19 CONTINGENT EFFECT. This Act is contingent on passage by the Second Regular  
20 Session of the Twenty-Fifth Alaska State Legislature and enactment into law of a bill  
21 appropriating an amount equal to the unencumbered balance of the Alaska children's trust,  
22 established under AS 37.14.200, as a grant to a named recipient for community-based  
23 programs and projects in the state that aid in the prevention of child abuse and neglect.

24 \* Sec. 9. If, under sec. 8 of this Act, this Act takes effect, it takes effect on the effective date  
25 of the appropriation described in sec. 8 of this Act.

# LEGAL SERVICES

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Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 27, 2008

**SUBJECT:** Alaska Children's Trust Repeal (CS SB 206( ));  
Work Order No. 25-LS1198(E)

**TO:** Senator Bettye Davis  
Attn: Tom Obermeyer

**FROM:** Jean M. Mischel  
Legislative Counsel

I have enclosed another draft of the above referenced bill based on the most recent request you transmitted from Jim Baldwin. As I have explained in multiple telephone conversations and in a November memorandum to you on this subject, I have serious doubts about the legality of transferring public funds, collected from license fees and other means, to a private and named group in substantive law. In addition to the public trust doctrine and the potential of having misled original donors and fee payors, this approach also appears to me to violate the constitutional prohibition on special and local legislation.

I have retained the license fee collection for the "Alaska Children's Trust" as requested but point out the obvious, which is that this bill repeals that trust. You may want instead to maintain the trust fund and authorize an appropriation from that fund to a named recipient grantee as provided for in a previous draft of this bill.

You have also asked a series of "rhetorical" questions, including whether and how the state would continue to exercise control over the privately managed trust funds. Those questions are best directed to the requestors of this legislation.

If I may be of further assistance, please advise.

JMM:med  
08-137.med

Enclosure

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 206  
 ( ) Publish Date: \_\_\_\_\_  
 Dept. Affected: Health & Social Services  
 RDU Children's Services  
 Component Children's Trust Programs

ID/File name) SB206-DHSS-CTP-03-13-08  
 Title REPEALING THE ALASKA CHILDREN'S TRUST  
 Sponsor DAVIS  
 Requester SENATE HES

Component No. 2251

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation		Information				
	Required						
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel	(13.2)	13.2	(13.2)	(13.2)	(13.2)	(13.2)	(13.2)
Contractual	(790.0)	790.0	(790.0)	(790.0)	(790.0)	(790.0)	(790.0)
Supplies	(1.5)	1.5	(1.5)	(1.5)	(1.5)	(1.5)	(1.5)
Equipment							
Land & Structures							
Grants & Claims	(415.0)	415.0	(415.0)	(415.0)	(415.0)	(415.0)	(415.0)
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>(1,219.7)</b>	<b>1,219.7</b>	<b>(1,219.7)</b>	<b>(1,219.7)</b>	<b>(1,219.7)</b>	<b>(1,219.7)</b>	<b>(1,219.7)</b>
<b>CAPITAL EXPENDITURES</b>							
<b>CHANGE IN REVENUES (0)</b>							

**FUND SOURCE** (Thousands of Dollars)

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts	(630.0)	630.0	(630.0)	(630.0)	(630.0)	(630.0)	(630.0)
1003 GF Match							
1004 GF							
1037 GF/Mental Health							
Other(Interagency Receipts)	(40.0)	40.0	(40.0)	(40.0)	(40.0)	(40.0)	(40.0)
Other 1098 & 1099 - see note below*	(549.7)	549.7	(549.7)	(549.7)	(549.7)	(549.7)	(549.7)
<b>TOTAL</b>	<b>(1,219.7)</b>	<b>1,219.7</b>	<b>(1,219.7)</b>	<b>(1,219.7)</b>	<b>(1,219.7)</b>	<b>(1,219.7)</b>	<b>(1,219.7)</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time	-1	1	-1	-1	-1	-1	-1
Temporary							

**ANALYSIS:** (Attach a separate page if necessary)

\* NOTE: Due to limited space, the fund source information located in the bottom "Other" line is a combination of fund 1098, Children's Trust Earnings -399.7 and 1099, Children's Trust Principal -150.0 for a total of -549.7.

This bill repeals the Alaska Statutes pertaining to the Alaska Children's Trust and transitions the unencumbered balance of the funds into the general fund. Unusable federal and interagency receipt authority will be deleted as well as the one position associated with the Alaska Children's Trust component.

(Continued on Page 2)

Prepared by: Tammy Sandoval, Director  
 Division Office of Children's Services  
 Approved by: Karleen Jackson, Commissioner  
 Agency Department of Health and Social Services

Phone 465-3191  
 Date/Time 01/23/2008  
 Date 03/13/2008

**ANALYSIS CONTINUATION**

This bill does not address the remaining federal funds granted by the Department of Justice, Office of Juvenile Justice for the project titled Child Abuse Prevention Project. These funds have been used mainly to purchase educational advertising regarding child abuse prevention and have been managed through the trust. The current balance of the grant is \$265.6 and the grant is scheduled to expire Sept. 30, 2008.



# **The Alaska Children's Trust: Options for the Future**

**A Report Prepared by The Giving Practice  
March 17, 2006**

**Presented to the Trust March 21, 2006 and Finalized With Input From Interviewees April  
25, 2006.**

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## BACKGROUND AND SCOPE OF WORK

The Giving Practice was contacted in March 2005 seeking input about possibly providing consulting services to The Alaska Children's Trust to research other possible organizational structures and comparing them against the Trust's current operations.

The Trustees of the Alaska Children's Trust were experiencing increasing frustration and concern that they were unable to meet the responsibilities of their office and, as a consequence, meeting the Trust's mission in an efficient way. Their concerns seemed to center around several issues:

1. Inconsistent staffing that changed over time (from full-time dedicated staff to part-time staff) and moved from department to department and individual to individual.
2. Concern about how changes in the administration might influence how strongly the Trust's work was supported by the State.
3. A desire to achieve different investment goals than had been followed up to present.
4. Lack of ability to reach small, grassroots organizations with grant support due to a cut back in Trust staffing and the required use of the State's long and complex grant application form.
5. Difficulties experienced by Friends of the Alaska Children's Trust (FACT), a separate 501(c)(3) organization, in raising funds from donors who wished to support specific programs (such as dollars to increase grants to parenting education programs) vs. adding to the Trust's corpus held by the State, which is the only current option.
6. Recently received federal dollars appropriated to the Alaska Children's Trust's totaling almost \$1,000,000 over the past two years, that require constant staff oversight (not only sporadic volunteer management) to ensure good use of the funds. Current Trust statute does not allow donations to the Alaska Children's Trust to be used for programming. Therefore, federal, or any other potential programming donations must currently be funneled either through state government or to FACT, complicating the ACT board's ability to properly exercise its responsibilities or easily influence the use of funds.
7. The limited dollars available for annual grantmaking (currently the portion of interest income from the Trust, released by the Department of Revenue, minus selected administrative expenses) is small – just \$348,000 – and by statute limited to a maximum amount. This hamstring the Trust's ability to best leverage its small annual budget to assist efforts in the state to actually prevent child abuse and neglect.